



**Office of General Services
Procurement Services**

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**AGREEMENT FOR
VEHICLES, CLASS 1-8 (STATEWIDE)

BY AND BETWEEN

NEW YORK STATE
OFFICE OF GENERAL SERVICES

AND

(SEE AWARD DOCUMENT FOR CONTRACTORS)**

TABLE OF CONTENTS

1.	INTRODUCTION	6
1.1.	OVERVIEW	6
1.2.	SCOPE	6
1.3.	ESTIMATED QUANTITIES.....	6
1.4.	DEFINITIONS AND ACRONYMS.....	7
2.	GENERAL TERMS AND CONDITIONS.....	11
2.1.	CONTRACT DOCUMENTS AND CONFLICT OF TERMS.....	11
2.2.	APPENDIX B MODIFICATIONS	11
2.3.	CONTRACT TERM AND EXTENSIONS.....	11
2.4.	SHORT TERM EXTENSION.....	11
2.5.	PRICE	12
2.6.	NYS DISCOUNT	12
2.7.	NYS AFTERMARKET COMPONENTS PRICE.....	12
2.8.	NYS PRICE FOR VEHICLE (SINGLE OEM VEHICLES AND CHASSIS)	12
2.9.	NYS PRICE FOR VEHICLE (BODY)	13
2.10.	MINI-BID METHOD OF AWARD	13
2.11.	ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC) PRICE	15
2.12.	ORDERING.....	15
2.13.	PURCHASING CARD ORDERS	16
2.14.	MINIMUM ORDER	16
2.15.	INVOICING AND PAYMENT	16
2.16.	PRODUCT DELIVERY.....	16
2.17.	PRE-DELIVERY INSPECTION OF VEHICLE(S) WITH BODY UPFIT	17
2.18.	CONDITION ON DELIVERY	17
2.19.	POST DELIVERY INSPECTION	18
2.20.	DELIVERY TIME	19
2.21.	DEFAULT ON MINI-BID.....	19
2.22.	LIQUIDATED DAMAGES	19
2.23.	CONTRACT ADMINISTRATION.....	20
2.24.	NYS FINANCIAL SYSTEM (SFS)	20
2.25.	DEALER CERTIFICATION	20
2.26.	INSURANCE	20
2.27.	REPORT OF CONTRACT USAGE	21

2.28. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN	21
2.29. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES	23
2.30. USE OF RECYCLED OR REMANUFACTURED MATERIALS	23
2.31. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4	24
2.32. CONSUMER PRODUCTS CONTAINING MERCURY	24
2.33. DIESEL EMISSION REDUCTION ACT	24
2.34. OVERLAPPING CONTRACT PRODUCTS	24
2.35. NYS VENDOR RESPONSIBILITY	24
2.36. NYS TAX LAW SECTION 5-A	25
2.37. "OGS OR LESS" GUIDELINES	25
2.38. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.....	25
2.39. CENTRALIZED CONTRACT MODIFICATIONS.....	26
2.40. DRUG OR ALCOHOL USE PROHIBITED.....	26
2.41. TRAFFIC INFRACTIONS	26
2.42. PROCUREMENT METHOD	26
3. SPECIFICATIONS.....	30
3.1. VEHICLE REQUIREMENTS	30
3.2. STANDARDS, CODES, RULES, AND REGULATIONS	30
3.3. STANDARD EQUIPMENT	31
3.4. MANUALS	31
3.5. COMPATIBLE EQUIVALENT.....	31
3.6. EQUIPMENT, PARTS AND ACCESSORIES.....	31
3.7. OPTIONS	32
3.8. AFTERMARKET COMPONENTS	32
3.9. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC).....	33
3.10. AVAILABILITY OF SERVICE & PARTS	33
3.11. ADVERTISING	33
3.12. VEHICLE INSPECTION	33
3.13. PRE-PRODUCTION MEETING	34
3.14. PILOT MODEL INSPECTION.....	34
3.15. GENERAL WARRANTY REQUIREMENTS.....	34
3.16. WARRANTY REPAIR BY AUTHORIZED USERS.....	35
3.17. POST-DELIVERY SERVICE	35

3.18. RECALLS35

3.19. TRAINING.....35

4. GENERAL PROVISIONS.....35

4.1. NOTICES.....35

4.2. CAPTIONS36

4.3. SEVERABILITY36

4.4. COUNTERPARTS36

4.5. ENTIRE AGREEMENT36

CONTRACT SIGNATURE PAGE.....37

APPENDICES

- Appendix A – Standard Clauses for NYS Contracts (October 2019)
- Appendix B – General Specifications For 40440-23166 Vehicles, Class 1-8 (June 2019)
- Appendix C – Contract Modification Procedure
- Appendix D – Lease Vehicles

ATTACHMENTS

- Attachment 1 – Contractor information
- Attachment 2 – Insurance Requirements
- Attachment 3 – Report of Contract Usage

**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PCXXXXX
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
VEHICLES, CLASS 1-8 (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services (OGS)**, whose office is on the 36TH Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and **Contractor Name**, having its principal place of business at **Contractor Address** (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for commodities for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Vehicles, Class 1-8, as further described herein; and

WHEREAS, OGS issued Solicitation #23166, for Vehicles Class 1-8 (Statewide), which was advertised in the July 25, 2019 edition of the New York State Contract Reporter as required by the New York State Economic Development Law; and

WHEREAS, the Solicitation was issued for the purposes of establishing a Contract for a Bidder’s complete or partial Vehicle OEM Product Line, as specified by the Bidder, with Product acquisition via an Authorized User competitive Mini-Bid process; and

WHEREAS, the State has determined that the Contractor submitted a responsive proposal, and is willing to provide the OEM Product Line(s) at the minimum discounts set forth in the Contract.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

1. INTRODUCTION

1.1. OVERVIEW

The purpose of this Contract is to provide Authorized Users with a means of acquiring (purchasing or leasing) new Vehicles, Class 1-8. Vehicle acquisition Shall be on an as-needed basis by Authorized Users via a competitive Mini-Bid process (see Section 2.42 *Procurement Method*).

1.2. SCOPE

This Contract sets forth the terms and conditions governing the purchase or lease of new Vehicles, (including Chassis, Bodies, Complete Vehicles, and associated Options and Aftermarket Components), as specified herein. The scope of this Contract Shall include one or more of the following Class Vehicles as set forth in Attachment 1 – *Contractor Information*: Class 1 (1 to 6,000 lb. GVWR), Class 2 (6,001 to 10,000 lb. GVWR), Class 3 (10,001 to 14,000 lb. GVWR.), Class 4 (14,001 to 16,000 lb. GVWR), Class 5 (16,001 to 19,500 lb. GVWR), Class 6 (19,501 to 26,000 lb. GVWR), Class 7 (26,001 to 33,000 lb. GVWR), and Class 8 (33,001 lb. GVWR & Over).

This Contract is for the OEM Product Line(s) available from the Dealer(s), and at the NYS Minimum Chassis Discount(s), if applicable, set forth in Attachment 1 – *Contractor Information*.

The Vehicles Shall include all standard equipment normally sold and marketed to the retail public, unless otherwise directed by an Authorized User. Vehicles Shall be new, (i.e., the equitable or legal title to which has never been transferred by a manufacturer, distributor or Dealer to an ultimate purchaser). "Demos" or "used" Vehicles are outside the scope of this Contract and Shall not be sold in response to a Mini-Bid.

The following Vehicles are excluded from this Contract:

1. Heavy Construction Equipment (i.e., equipment which is intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, and sweepers), and other related attachments and equipment);
2. Low Speed Vehicles (i.e., a limited use automobile or truck that has a maximum speed greater than 20 miles per hour (mph) but not more than 25 mph and has a GVWR less than 3,000 pounds);
3. School Buses (i.e., every motor vehicle owned, leased or contracted for by a School and operated for the transportation of pupils under the age of 21 years, children of pupils, teachers and other persons acting in a supervisory capacity, to or from School or School activities (i.e., any program for the benefit of pupils, sponsored and supervised by school officials), but does not include a bus designed and sold for operation as a common carrier in urban transportation); and
4. Transit Buses that will be purchased with FTA funding and are available from any OGS Contract awarded under Group 40523 *Transit Buses*.

1.3. ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor Must furnish all quantities actually ordered at or below the Contract prices. The individual value of each Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Section 28 *Estimated/Specific Quantity Contracts* and Appendix B, Section 25 *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract to vary substantially from any estimates provided in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts May be non-exclusive Contracts.

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimated quantities provided.

1.4. DEFINITIONS AND ACRONYMS

Capitalized terms used in this Solicitation Shall be defined in accordance with Appendix B, Section 2 *Definitions*, or as below. Additional definitions that are specific to a Lease Vehicle are included in Appendix D – *Lease Vehicles*, Section A *Lease Vehicle Terms and Conditions*, Paragraph 1 *Definitions*.

“Additional Options and Aftermarket Components (AOAC)” Shall refer to any Option or Aftermarket Component that is either added to or deleted from the Authorized User Specifications for a Vehicle after a Mini-Bid has been awarded.

“Aftermarket Component(s)” Shall mean any accessory, equipment, or feature that is manufactured by an OEM other than the Vehicle OEM, and is not included in the OEM Product Line, and that May be installed on the Vehicle by the Contractor, or third-party.

“Aftermarket Component Provider” Shall refer to the provider of an Aftermarket Component (i.e., Contractor or third-party).

“AOAC Discount” Shall refer to the percentage amount that is deducted from the MSRP (for Single OEM Vehicle or Chassis Options), or Contractor-Published Pricelist (for Body Options and Aftermarket Components), as applicable.

“Authorized User Specifications” Shall refer to the minimum Vehicle, delivery and Lease Vehicle specifications provided by the Authorized User for the Mini-Bid.

“Body(ies)” Shall refer to the portion of a Vehicle which Must be attached to a Chassis in order to carry the load or cargo, and is an incomplete Vehicle without being attached to a Chassis. Examples include aerial lift, ambulance, beverage, box/van, bus, concrete mixer, dump, flat bed, log, pickup, recyclable/refuse, refrigerator, service/utility, stake, sweeper, tank, tow truck, and trailer.

“Body Upfit” Shall refer to the installation of a Body on a Chassis.

“Body Upfitter” Shall refer to a business that installs Bodies on Chassis to form a Complete Vehicle.

“Build-Out Date” Shall mean the last calendar date that a Model Shall be manufactured for a particular Model Year.

“Build Sheet” Shall refer to the document which lists, at a minimum, for the Vehicle(s) offered in a Mini-Bid:

1. The Make and Model of the Vehicle(s);
2. An itemized list of all standard equipment, Options and Aftermarket Components included in the Vehicle(s); and
3. For Single OEM Vehicles and Chassis, the document Must also include:
 - A) The MSRP of the standard base Vehicle(s);
 - B) The MSRP and Option code for each Option included in the Vehicle(s); and
 - C) The total NYS Base MSRP of the Vehicle(s).

“Built to Specifications” Shall refer to a Vehicle that the Contractor Shall order directly from the OEM(s) and that Shall be built to meet the Authorized User Specifications identified in a Mini-Bid.

“Business Day(s)” Shall mean Monday through Friday, from 8am ET to 5pm ET, exclusive of federal or NYS holidays.

“Chassis” Shall mean the portion of a Vehicle that includes the frame, wheels, and machinery (e.g., engine, transmission, driveshaft, differential, and suspension), and is an incomplete Vehicle until it is joined to a Body. Chassis includes Chassis cabs, cutaway Chassis, and any other Chassis-only incomplete Vehicle.

“Chronic Failure” Shall refer to a component of a Vehicle or Aftermarket Component that repeatedly fails or becomes inoperable and has to be replaced more than once within the OEM-rated life expectancy of the component.

“Class” Shall refer to a Vehicle classification that is determined based on the Vehicle’s GVWR.

“Compatible Equivalent” Shall mean any Product which, in the sole opinion of the Authorized User, is equal in performance, quality and design in such a way that the Product is directly interchangeable with the referenced Product without modification.

“Complete Vehicle” Shall mean a Vehicle that is ready for use and requires no further manufacturing operations to perform its intended function, and is either 1) a Single OEM Vehicle, or 2) the result of a Body Upfit.

“Contractor-Published Pricelist” Shall refer to the electronic, (i.e., in Excel or PDF format), document(s) issued by the Contractor which lists, among other things, an item number, description and MSRP or Contractor’s standard list price for the Contractor’s complete Product Line.

“Dealer(s)” Shall refer to a distribution source for an OEM, authorized and designated by said OEM, subject to approval by OGS, which May include the OEM or an entity other than the OEM.

“eProcurement Platform” Shall mean the internet platform designated by OGS for the acceptance of new contractor Bids and the processing of Mini-Bids under this Award.

“Final Order Due Date” Shall mean the last calendar date that an Authorized User May issue a Purchase Order to the Contractor in order to have the Vehicle built before Model Year Build-Out Date.

“Grand Total Price For Mini-Bid” Shall refer to, for a Mini-Bid for a Complete Vehicle that includes both a Chassis and a Body, the sum of the Total Price For Mini-Bid for the Chassis plus the Total Price For Mini-Bid for the Body.

“GVWR” Shall refer to Gross Vehicle Weight Rating, which means the maximum total Vehicle weight, measured at the tire-ground interfaces, for which the Vehicle possesses components adequately rated to safely carry.

“Lease(s)” Shall mean an agreement under the Contract between an Authorized User and a Lease Provider, in which the Lease Provider agrees to provide a Lease Vehicle to the Authorized User in return for a periodic payment.

“Lease Vehicle” Shall mean the Vehicle that is provided under the Lease.

“Light Duty Vehicle(s)” Shall mean a mobile machine that is primarily used to transport passengers and cargo (e.g., cars, vans, SUVs, pickup trucks), with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation).

“Make” Shall refer to the OEM company name of a Vehicle Model (e.g., Ford, International, Freightliner, Viking, Galion).

“May” Shall mean the permissive in a clause or specification of this Contract. “May” does not mean “required.” Also see “Shall” and “Must.”

“Mini-Bid” Shall refer to the competitive procurement process that a Contractor Must participate in to provide a Vehicle to an Authorized User under the Contract.

“Mini-Bid Number” Shall refer to the system-generated number assigned to the Mini-Bid.

“Model” Shall refer to a particular brand of Vehicle sold by an OEM (e.g., Malibu, Explorer, F-450, DuraStar, M2-106, 450U).

“Model Code” Shall refer to the OEM code used to identify a particular subset of a Vehicle Model.

“Model Year” Shall mean the year used to designate a discrete Model, irrespective of the calendar year in which the Vehicle was actually produced, provided that the production period does not exceed 24 months.

“MSRP” Shall refer to the Manufacturer’s Suggested Retail Price, as published by the OEM.

“Must” Shall mean the imperative in a clause or specification of this Contract. “Must” is synonymous with “required.” Also see “Shall” and “May.”

“MWBE” Shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

“NYS Aftermarket Components Price” Shall mean the total amount charged to the Authorized User for Aftermarket Components added to the Vehicle, inclusive of delivery, and installation at the Contractor’s normal, published labor rates, which Shall not be more than what is charged to the public at large.

“NYS Base MSRP” Shall refer to the total of the MSRP for either a Single OEM Vehicle or Chassis offered in a Mini-Bid, as applicable, including all standard equipment provided with the Vehicle, all Options necessary to meet the Authorized User Specifications, and all applicable OEM fees, (e.g., destination charges). The NYS Base MSRP does not include Aftermarket Components.

“NYS Base Price” Shall refer to the following:

1. For a Single OEM Vehicle or a Chassis, the NYS Base MSRP minus the NYS Discount; and
2. For a Body, the NYS Price For Vehicle for the Body, excluding the NYS Aftermarket Components Price.

“NYS Discount” Shall mean the actual percentage amount by which the NYS Base MSRP is reduced in both the Contractor’s response to a Mini-Bid and for the purchase resulting from the Mini-Bid.

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“NYS Minimum Discount” Shall mean a minimum percentage amount by which the NYS Base MSRP of a Single OEM Vehicle or Chassis Shall be reduced in a Mini-Bid.

“NYS Price For Vehicle” Shall mean the dollar amount charged to the Authorized User for each Vehicle, and includes all standard equipment provided with the Vehicle, all Options necessary to meet the Authorized User Specifications, and all applicable OEM fees, (e.g., destination charges), all customs duties and charges, all Vehicle preparation and clean-up charges, Aftermarket Components, installation charges, delivery, and all other incidentals included with providing the Vehicle to the Authorized User.

“NYS Vehicle Marketplace” Shall refer to the OGS processes for conducting a Mini-Bid under this Contract, as set forth in Section 2.42 *Procurement Method*.

“NYS Vendor ID” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the NYS Vendor File System.

“OEM” Shall mean Original Equipment Manufacturer.

“OEM Pricelist” Shall refer to the nationally published or internal document(s) issued by the Vehicle manufacturer which lists, among other things, an Option Code, description and MSRP for the OEM’s Product Line.

“OEM Vehicle Specifications” Shall refer to the document(s) issued by the Vehicle manufacturer which lists, among other things,

1. All standard equipment for the Vehicle;
2. All Options available for the Vehicle, including the code number for each Option; and
3. The MSRP for the Vehicle and available Options.

“Options” Shall refer to accessories, equipment, or features that are available from the OEM and that can be added to, or deleted from, a Vehicle.

“Option Code” Shall refer to an alpha-numerical code (also known as a Feature Code) used by an OEM to identify a particular feature or Option included with, or available for, a Vehicle.

“Pre-Existing Inventory” Shall refer to Vehicle(s) that were manufactured by the OEM prior to posting of the Mini-Bid. Pre-Existing Inventory May either be located at the Contractor’s business location, or another location.

“Procurement Services” Shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPro”) and Procurement Services Group (“PSG”).

“Product Line” Shall mean a group of related products manufactured by a single company, or offered by a company in its usual course of business.

“School” Shall mean every place of academic, vocational or religious services or instruction for persons under the age of 21 years, except places of higher education. It Shall include every child care center, every institution for the care or training of the mentally or physically handicapped, and every day camp.

“Shall” Shall mean the imperative in a clause or specification of this Contract. “Shall” is synonymous with “required.” Also see “Must” and “May.”

“Single OEM Vehicle(s)” Shall mean a Complete Vehicle that is marketed and sold under one OEM brand name (e.g., cars, mini-vans, SUVs, and pickups).

“SDVOB” Shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

“Total Price For Mini-Bid” Shall refer to the following:

1. For a Single OEM Vehicle that is a Vehicle Built to Specifications, the NYS Price For Vehicle, multiplied by the number of Vehicles;
2. For a Single OEM Vehicle that is a Pre-Existing Vehicle, where the method of award is “Lowest price to a single contractor,” the sum of the NYS Price For Vehicle for each Pre-Existing Vehicle offered;
3. For a Chassis (i.e., in either a Chassis-only Mini-Bid or a Mini-Bid for Complete Vehicle that includes both a Chassis and Body), the NYS Price For Vehicle, multiplied by the number of Chassis; and
4. For a Body (i.e., in either a Body-only Mini-Bid or a Mini-Bid for Complete Vehicle that includes both a Chassis and Body), the NYS Price For Vehicle, multiplied by the number of Bodies.

“Vehicle(s)” Shall mean all components of a mobile machine that May be used to transport passengers or cargo. All components provided under a Mini-Bid (i.e., Chassis, Bodies, Light Duty Vehicles, and Complete Vehicles) but not including any associated Aftermarket Components, are collectively referred to as “Vehicle(s)” in this Contract.

“Written” Shall mean any writing that makes use of words. Examples of Written communications include e-mail, Internet websites, letters, proposals, and contracts.

2. GENERAL TERMS AND CONDITIONS

This section sets forth the general terms and conditions of the Contract.

2.1. CONTRACT DOCUMENTS AND CONFLICT OF TERMS

Any conflicts among these documents Shall be resolved in the following order of precedence:

1. Appendix A – *Standard Clauses for New York State Contracts* (October 2019)
2. This document (Base Agreement), the portion of the Contract preceding the Parties' signatures, and Appendix D – *Lease Vehicles*
3. Appendix B – *General Specifications For 40440-23166 Vehicles, Class 1-8* (June 2019)
4. Attachment 2 – *Insurance Requirements*
5. Attachment 1 – *Contractor Information*
6. Appendix C – *Contract Modification Procedure*
7. Attachment 3 – *Report of Contract Usage*

Contractor is responsible for retaining the original of all completed forms submitted through the eProcurement Platform with its Bid for Solicitation 23166, with ink signatures if applicable. The original forms Must be retained by the Contractor for the life of the Contract (a longer retention period than the six (6) year period referenced in Appendix A, Section 10 *Records*), and Must be provided to OGS upon request.

2.2. APPENDIX B MODIFICATIONS

The following Appendix B clauses are hereby modified for the purposes of this Contract:

1. Appendix B, Section 31 *Product Delivery*, is deleted and replaced in its entirety by Section 2.16 of this Contract, *Product Delivery*.

2.3. CONTRACT TERM AND EXTENSIONS

All Contracts awarded under Solicitation 23166 Shall terminate simultaneously ten (10) calendar years from the date of OGS approval of the first Contract awarded. The Contract term Shall commence after all necessary approvals and Shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Section 22 *Contract Creation/Execution*).

This Contract and all OGS Centralized Contracts resulting from the Solicitation Shall have a co-terminus end date. At the State's option, the Contract May be extended as set forth in Appendix B, Section 23 *Contract Term – Extension*. Whether the optional extension is exercised is at the sole discretion of the State. A Contractor Shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements.

The Contract term provided for in this section Shall extend six (6) months beyond its termination date only for Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. During the six-month period the definition of Authorized User Shall be deemed to refer only to Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph Shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, May agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

2.4. SHORT TERM EXTENSION

This section Shall apply in addition to any rights set forth in Appendix B, Section 23 *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State May be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension May be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

2.5. PRICE

Pricing for Vehicles provided under the Contract Shall be subject to the terms and conditions in Sections 2.5 through 2.11. A Contractor providing pricing in a response to a Mini-Bid Must submit such response in the manner communicated by OGS to all Contractors under this Award. This May include the use of a third-party eProcurement Platform, which May dictate the format of data entry and use of the data entered by the Contractor to perform the bid calculation. The required method of submitting Mini-Bid responses is subject to change at the discretion of OGS, without requiring an amendment to this Contract.

Unless otherwise specified by an Authorized User, the NYS Base Price Shall include all customs and duties, OEM destination fee, all Vehicle preparation and clean-up charges, NYS motor Vehicle inspection, installation charges and all other OEM and Dealer incidentals normally included with providing a Vehicle.

Options, when specified in the Authorized User Specifications included with the Mini-Bid, (See Section 3.7 *Options*), Shall include any and all labor, installation, fittings, connections, etc., that might be needed to attach the Option to the Vehicle so that the Option operates to the Option’s full design capabilities; there Shall be no additional up-charges, fees, etc., for adding Options. If a standard Option is being deleted from a Vehicle, the Contractor Must give the Authorized User proof of the MSRP for the Option if requested, as shown in the OEM or Contractor-Published Pricelist.

2.6. NYS DISCOUNT

The Contractor Shall offer Single OEM Vehicles and Chassis purchased under the Contract at either the NYS Minimum Discount(s) set forth in Attachment 1 – *Contractor Information*, or a greater discount. The NYS Minimum Discount Must be one (1) percent or greater. A Mini-Bid offer that includes a NYS Discount that is less than the NYS Minimum Discount, and any offer of pricing greater than MSRP, Shall be rejected by the Authorized User.

The Contractor May offer a NYS Discount that is greater than the NYS Minimum Discount set forth in the Contract, for Mini-Bids conducted under the Contract, at any time without prior approval. The Contractor May request an increase to the NYS Minimum Discount set forth in the Contract by submitting Appendix C – *Contract Modification Procedure* (see Section 2.39 *Centralized Contract Modifications*). The NYS Minimum Discount May not be decreased during the Contract term.

2.7. NYS AFTERMARKET COMPONENTS PRICE

The NYS Aftermarket Components Price for Aftermarket Components specified by an Authorized User Shall be a discount from MSRP, or Aftermarket Component Provider list price, if applicable. Offers of pricing greater than the MSRP or Aftermarket Component Provider list price in a Mini-Bid, if applicable, Shall result in rejection of the bid. Upon request, Contractors are required to give the Authorized Users a copy of the MSRP, or Aftermarket Component Provider list price, if applicable, for Aftermarket Components.

2.8. NYS PRICE FOR VEHICLE (SINGLE OEM VEHICLES AND CHASSIS)

A Contractor responding to a Mini-Bid for a Single OEM Vehicle, or a Mini-Bid that includes a Chassis (i.e., a Chassis-only Mini-Bid, or a Mini-Bid for Complete Vehicle that includes both a Chassis and a Body), Shall provide a NYS Base MSRP, NYS Discount and, if applicable, NYS Aftermarket Components Price for the Single OEM Vehicle or the Chassis, as applicable. Set forth below is an example of how the NYS Price For Vehicle is calculated for Single OEM Vehicles and Chassis.

Description	Price
NYS Base MSRP	\$60,000.00
NYS Discount [<i>in this example, 23.00% of \$60,000 is equal to \$13,800</i>]	23.00
NYS Base Price [<i>Automatically calculated: NYS Base MSRP minus NYS Discount</i>].	\$46,200.00
NYS Aftermarket Components Price	\$450.00
NYS Price For Vehicle	\$46,650.00

2.9. NYS PRICE FOR VEHICLE (BODY)

A Contractor providing a response to a Mini-Bid that includes a Body (i.e., either a Body-only Mini-Bid, or a Mini-Bid for a Complete Vehicle that includes both a Chassis and a Body), Shall provide the NYS Base Price and, if applicable, NYS Aftermarket Components Price, for the Body. Set forth below is an example of how the NYS Price For Vehicle is calculated for a Body.

Description	Price
NYS Base Price	\$50,000.00
NYS Aftermarket Components Price	\$2,000.00
NYS Price For Vehicle	\$52,000.00

2.10. MINI-BID METHOD OF AWARD

Each Mini-Bid will be ranked and evaluated based on either 1) the NYS Price For Vehicle, 2) the Total Price For Mini-Bid, or 3) the Grand Total Price For Mini-Bid. Set forth below are examples of the method of award for the Vehicles that meet the Authorized User Specifications for each type of Mini-Bid.

1. Single OEM Vehicles (Built to Specifications)

Mini-Bids for Single OEM Vehicles that are for Vehicles Built to Specifications Shall be awarded based on lowest Total Price For Mini-Bid, which is calculated as shown in the example below.

Description	Price
NYS Price For Vehicle	\$46,500.00
Number of Vehicles	2
Total Price For Mini-Bid [<i>Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles</i>]	\$93,000.00

2. Single OEM Vehicles (Pre-Existing)

Mini-Bids for Single OEM Vehicles that are for Pre-Existing Vehicles Shall be awarded as specified by an Authorized User in the Mini-Bid. The method of award Shall be either "Lowest price, per Vehicle," or "Lowest price to a single contractor." Examples of how each method is calculated is shown in the examples below.

- A. **Lowest price, per Vehicle, to multiple Contractors.** Each Pre-Existing Vehicle offered by the Contractor(s) for the Mini-Bid Shall be ranked based on NYS Price For Vehicle, and award will be made in order from lowest to highest, to the number of Contractors required to fulfill the Vehicle request.

Bidder / Vehicle	Description	Price
Bidder 1 / Vehicle 1	NYS Price For Vehicle	\$25,080.00
Bidder 1 / Vehicle 2	NYS Price For Vehicle	\$25,085.60
Bidder 2 / Vehicle 1	NYS Price For Vehicle	\$26,090.00
Bidder 1 / Vehicle 3	NYS Price For Vehicle	\$26,100.00
Bidder 2 / Vehicle 2	NYS Price For Vehicle	\$28.900.00
Bidder 2 / Vehicle 3	NYS Price For Vehicle	\$28.950.00

- B. **Lowest price to a single contractor.** Each Contractor that offers the total number of Pre-Existing Vehicles requested is ranked based on Total Price For Mini-Bid, which is the sum of the NYS Price For Vehicle for each Pre-Existing Vehicle offered. Award will be made to the Contractor with the lowest Total Price For Mini-Bid.

Bidder / Vehicle	Description	Price
Bidder 1 / Vehicle 1	NYS Price For Vehicle	\$25,080.00
Bidder 1 / Vehicle 2	NYS Price For Vehicle	\$25,085.60
Bidder 1 / Vehicle 3	NYS Price For Vehicle	\$26,100.00
Bidder 1 Mini-Bid Offer	Total Price For Mini-Bid	\$76,265.60

Bidder / Vehicle	Description	Price
Bidder 2 / Vehicle 1	NYS Price For Vehicle	\$26,090.00
Bidder 2 / Vehicle 2	NYS Price For Vehicle	\$28,900.00
Bidder 2 / Vehicle 3	NYS Price For Vehicle	\$28,950.00
Bidder 2 Mini-Bid Offer	Total Price For Mini-Bid	\$83,940.00

3. Complete Vehicles (Chassis and Body)

Mini-Bids for Complete Vehicles that include both a Chassis and a Body Shall be awarded based on lowest Grand Total Price For Mini-Bid, which is the sum of the Total Price For Mini-Bid for the Chassis and the Total Price For Mini-Bid for the Body. An example of the calculation is shown below.

Description	Price
NYS Price For Vehicle (Chassis)	\$36,500.00
Number of Vehicles (Chassis)	2
Total Price For Mini-Bid (Chassis) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$73,000.00

Description	Price
NYS Price For Vehicle (Body)	\$66,250.00
Number of Vehicles (Body)	2
Total Price For Mini-Bid (Body) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$132,500.00

Description	Price
Total Price For Mini-Bid (Chassis)	\$73,000.00
Total Price For Mini-Bid (Body)	\$132,500.00
Grand Total Price For Mini-Bid <i>[Automatically calculated: the sum of the Total Price For Mini-Bid (Chassis) plus the Total Price For Mini-Bid (Body)]</i>	\$205,500.00

4. Chassis-Only)

Mini-Bids that are for only a Chassis, with no Body Upfit, Shall be awarded based on lowest Total Price For Mini-Bid for the Chassis, which is calculated as shown in the example below.

Description	Price
NYS Price For Vehicle (Chassis)	\$36,500.00
Number of Vehicles (Chassis)	2
Total Price For Mini-Bid (Chassis) <i>[Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles]</i>	\$132,500.00

5. Body-Only

Mini-Bids that are for only a Body, with no Chassis, Shall be awarded based on lowest Total Price For Mini-Bid for the Body, which is calculated as shown in the example below.

Description	Price
NYS Price For Vehicle (Body)	\$66,250.00
Number of Vehicles (Body)	2
Total Price For Mini-Bid (Body) [<i>Automatically calculated: NYS Price For Vehicle, multiplied by the number of Vehicles</i>]	\$73,000.00

2.11. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC) PRICE

The following terms and conditions apply to the AOAC price. See Section 3.9 *Additional Options and Aftermarket Components (AOAC)* for terms and conditions applicable to offering AOAC under the Contract.

1. Unless otherwise agreed-upon by the Authorized User, the AOAC Discount Shall be at five (5) percent or a greater discount. Offers of pricing greater than either the MSRP on the OEM Pricelist, or the standard list price on the Contractor-Published Pricelist, as applicable, Shall be rejected by the Authorized User.
2. If an AOAC is being added to the Vehicle awarded in the Mini-Bid, the AOAC Discount Shall be applied to the MSRP on the OEM or Contractor-Published Pricelist, as applicable, to yield a NYS Contract Price. The price for the AOAC Shall be added to the applicable NYS Price For Vehicle.
3. If an AOAC is being deleted from the Vehicle awarded in the Mini-Bid, the MSRP of the AOAC Shall be subtracted from the NYS Base MSRP (for a Single OEM Vehicle or a Chassis) or NYS Base Price (for a Body), and the applicable NYS Price For Vehicle Shall be recalculated to reflect the deletion.

2.12. ORDERING

Purchase Orders Shall be made in accordance with the terms set forth in Appendix B, Section 30 *Purchase Orders*. Authorized Users May submit orders by hard copy, and, if available, May submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted Shall be deemed received by Contractor on the date submitted.

All Purchase Orders are to include the following information;

1. Purchase Order Number
2. Contract number;
3. Contractor business name;
4. Contractor NYS Vendor ID Number;
5. NYS Vehicle Marketplace Mini-Bid Number;
6. General description of Vehicle(s);
7. Make, Model and Model Code of the Vehicle(s);
8. Option Code(s) and descriptions, if applicable;
9. Make, Model, part numbers and descriptions, of Aftermarket Components, if applicable;
10. NYS Price For Vehicle(s);
11. Quantity ordered;
12. Total Price For Mini-Bid;
13. Total Aftermarket Component cost, if applicable; and
14. Liquidated damages, if any.

All Purchase Orders Shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor’s receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable). Contractor’s issuance of an order confirmation Shall be deemed a representation to the Authorized User that the Contractor has received and reviewed the Purchase Order and has entered the order with the OEM and that the

manufacturer has accepted the order and assigned an order number and anticipated build and delivery dates. See also Section 2.20 *Delivery Time*.

2.13. PURCHASING CARD ORDERS

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Section 15 *Purchasing Card*), also referred to as the Procurement Card, the Contractor Shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

2.14. MINIMUM ORDER

There is no minimum order amount for this Contract.

2.15. INVOICING AND PAYMENT

Invoicing and payment Shall be made in accordance with the terms set forth in Appendix B, Section 45 *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice Must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields Must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- NYS Vehicle Marketplace Mini-Bid Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Make, Model, and Model Code of the Vehicle(s)
- Make, Model, part numbers and descriptions, of Aftermarket Components, if applicable;
- NYS Price For Vehicle(s)
- Quantity
- Total Price For Mini-Bid

Cost centers or branch offices within an Authorized User May require separate invoicing as specified by each Authorized User. The Contractor's billing system Shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

2.16. PRODUCT DELIVERY

Contractors Shall be required to deliver Vehicles anywhere within New York State boundaries, as designated by the Authorized User in the Mini-Bid and on the Purchase Order. The following terms and conditions apply to Delivery:

1. The Contractor agrees to bear the risk of loss, injury, or destruction of the Product ordered, prior to receipt of the Vehicle by the Authorized User.
2. Delivery Shall be made in accordance with instructions on the Purchase Order from each Authorized User. It Shall be presumed that the Contractor received the Purchase Order on the third Business Day following the date of the Purchase Order, unless the Contractor provides credible evidence to the Authorized User that the

order was received on a later date. If there is a discrepancy between the Purchase Order and what was listed in the Mini-Bid or agreed upon after tentative award of the Mini-Bid it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS.

3. Contractor Shall secure a signed receipt from the Authorized User certifying delivery of a Vehicle and odometer reading. from Vehicles that have an odometer. In the event deficiencies are later noted and a properly signed receipt cannot be found, Contractor Shall be responsible for certifying delivery and odometer reading.
4. Pursuant to Appendix B, Section 33 *Shipping/Receipt of Product*, freight terms are F.O.B. Destination.
5. An Authorized User May choose to stagger the delivery of Vehicles over a period of time, and to multiple delivery locations, as specified on the Purchase Order. For example, an Authorized User May order forty (40) Vehicles with instructions to deliver four (4) Vehicles to each of ten (10) locations over a period of time.
6. Upon mutual agreement, delivery locations May be expanded per Section 2.38 *Non-State Agencies Participation in Centralized Contracts*.

2.17. PRE-DELIVERY INSPECTION OF VEHICLE(S) WITH BODY UPFIT

At the discretion of the Authorized User, the Contractor May be required to present a Vehicle with a Body Upfit for pre-delivery inspection. The terms and conditions of such inspection(s) Shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection Shall take place inside a building and on a dry Vehicle at the OEM's facility or Contractor's place of business, as mutually agreed upon by the Contractor and the Authorized User. When pre-delivery inspection is required, the Contractor Shall make no delivery of a Vehicle without Written approval of the Authorized User.

The Contractor Shall notify the Authorized User that the Vehicle is ready for inspection. Within five (5) Business Days of the Contractor's notification, the Authorized User Shall send a qualified inspector(s) to the mutually agreed upon location, to accomplish the inspection of the Vehicle before delivery. Upon arrival of the inspector(s) at the facility, the Contractor Shall assign a mechanic, a runner and a delivery bay to the inspector. If multiple Vehicles are being inspected, it is the Contractor's responsibility to properly itemize, organize and segregate all pre-delivery inspection Vehicles from any other Vehicles. The above areas of responsibility Must be accomplished in order to facilitate an expeditious and orderly inspection flow. This Shall also allow discrepancies to be corrected while the inspector is located at the Contractor's facility.

Inspected Vehicles which are found to not meet the specifications of the Mini-Bid or any other agreed-upon deviation Shall be rejected (see also Appendix B, Section 36 *Rejected Product*). All rejected Vehicles Shall be corrected, at the expense of the Contractor, and the corrected Vehicle Shall be presented for re-inspection within ten (10) working days. The Authorized User May cancel the Purchase Order if the Contractor fails to correct any problem, without incurring any cost or fee.

2.18. CONDITION ON DELIVERY

Vehicles Must be delivered strictly in accordance with the Authorized User Specifications and Shall be "Ready for Use," and/or as requested by the Authorized User. Each Vehicle and its components Shall be completely assembled, serviced and ready for use when delivered to the Authorized User. Unless specified otherwise, any parts, components, equipment, controls, materials, features, performances, capacities, ratings or designs which are standard and/or necessary to form an efficient and complete working Vehicle Shall be furnished whether specifically required herein or not. Additionally, each Vehicle Shall, at no additional cost to the Authorized User:

1. At point of acceptance, have an odometer reading that is consistent with the miles, in distance, to the anticipated odometer mileage incurred between the OEM factory, the Contractor's place of business, other mutually agreed upon location, if applicable, and the point of delivery. Note: In the event that a Vehicle is delivered with an odometer reading that the Authorized User considers to be excessive, the Contractor Shall be required to provide a reasonable explanation for the odometer reading. Vehicles that are delivered with an odometer reading that is considered excessive without a reasonable explanation May be rejected. Chassis Shall only be used for transport of other Chassis (e.g., as "mule" trucks), that are included in the Authorized User's delivery.

2. Be certified to meet or exceed requirements to obtain a NYS registration. The GVWR Shall be identified in the Chassis on the certification label. The Gross Combined Weight Rating (GCWR) Shall be identified by a decal in the cab indicating the approved weight which can be towed, if applicable.
3. Include the proper forms to apply for a NYS registration. These forms Shall include, but are not limited to:
 - A. Required from Contractors in New York State: MSO (Manufacturer's Statement of Origin), MV50 Retail Certificate of Sale (except for trailers with an unladen weight under 1,000 lb.; Include lienholder information when required by Authorized User), and MV82 (Vehicle Registration/Title Application); or
 - B. Required from Contractors outside New York State: Manufacturer's Certificate or Statement of Origin, and Odometer Disclosure Statement (This is not required if the Manufacturer's Certificate/Statement of Origin includes the odometer disclosure.) When a lien is required by the Authorized User, Out of state dealers Must additionally prepare a Notice of Lien (MV-900) and either (1) ensure it is submitted with the Title Application/Registration Paperwork, or (2), supply proof that the MV-900 was sent directly to the Title Bureau upon completion of the sale.
4. Have a valid NYS inspection sticker and a valid NYS emissions inspections sticker. Unless otherwise instructed by the Authorized User, all NYS state inspection requirements are the sole responsibility of the Contractor. See Section 3.12 *Vehicle Inspection*.
5. Have the OEM's recommended pre-delivery service completed.
6. Have the Chassis OEM's Model and Model Code stated on a decal affixed to the inside of the driver's side door.
7. Be clean, lubricated, serviced, with the fuel gauge registering no less than one half full, all adjustments completed, all components fully functional and operational, and the Vehicle in "road ready" condition.
8. Have permanent antifreeze to protect it at a level of -34 °F. Only a low silicate type anti-freeze Shall be used for Vehicles having diesel engines.
9. Be free from all Dealer signs/emblems. See Section 3.11 *Advertising*.
10. Include a copy of the OEM warranty and service policy with all warranty vouchers, certificates and coupons. Delayed warranty forms are to be provided with the required motor Vehicle paper work.
11. Have each Chassis, Body, and other applicable components identified with an identification tag that provides the OEM's name, Model, and individual serial number if applicable. Tags Shall be affixed in an accessible and readable position on the item.
12. If a Vehicle with a Body Upfit, include a bill of materials or line-setting ticket. The bill of materials Shall list by part number, capacity, size or otherwise, all major components of the Vehicle (engine, frame, transmission, drive line, axles, alternator, storage battery, fuel tank, etc.). The bill of materials Shall be at least as comprehensive as the OEM's line-set ticket.
13. If towed to the Authorized User for delivery, the towing device May not be attached in such a way that holes are drilled in the bumper of the Vehicle being towed. Drilling of holes in the Vehicle bumpers is not permitted. Any bumper damaged by a towing device Shall be replaced by the Contractor at no charge to the Authorized User. If a Vehicle is being towed by another Vehicle, the Vehicle being towed Must have the drive shaft disconnected to eliminate unnecessary mileage.

2.19. POST DELIVERY INSPECTION

After Vehicles have been delivered to the location stated on the Purchase Order, a post-delivery inspection Shall be performed by the Authorized User. If any deficiencies are found, it is the responsibility of the Contractor to arrange to have the necessary corrective work completed within five (5) Business Days after receipt of Written notification from the Authorized User. If the Contractor cannot arrange to have the necessary work completed within such time period, and the Authorized User cannot agree to an extension of such time period, the Authorized User May either reject the Vehicle (see Appendix B, Section 36 *Rejected Product*) or choose to have

the corrections made by an entity of the Authorized User's choosing. The Contractor Shall then be required to issue a revised invoice if any credits are required by the Authorized User as a result of deficiencies found during the post-delivery inspection.

2.20. DELIVERY TIME

The following provisions for delivery time Shall apply:

1. Delivery time Shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order (After Receipt of Order ("ARO")). All Vehicles Must be delivered within the number of days previously agreed upon by the Contractor and Authorized User. Failure to deliver within the previously agreed upon time period Shall result in payment of liquidated damages in accordance with Section 2.22 *Liquidated Damages*.
2. Contractor Shall provide Written acknowledgement of orders within five (5) Business Days After Receipt of Order.
3. Contractor Shall provide ordering Authorized User with anticipated shipping date of completed Vehicles upon receipt of purchase order or at the pre-production meeting. See Section 3.13, *Pre-Production Meeting*. If the anticipated shipping date cannot be provided by the Contractor at the time of the acknowledgement of order, or at the pre-production meeting, then the Contractor Shall provide the Authorized User with a reasonable explanation for not providing a date, and Shall provide the anticipated delivery date at the time it becomes known to the Contractor.
4. Unless otherwise agreed-upon by the Authorized User, the Contractor Shall furnish the Authorized User with Written acknowledgement of the delivery date to the Authorized User at least fourteen (14) calendar days prior to shipment.
5. If delivery will not be made within the delivery time, the Contractor is required to notify the Authorized User in writing within one (1) Business Day of when Contractor knows the delivery Shall not be made within the delivery time. This notification Must include the reasons for the delay and the latest date the Vehicle Shall be delivered. Should the delay not be acceptable to the Authorized User, the Authorized User May assess liquidated damages (see Section 2.22 *Liquidated Damages*).
6. All correspondence on delivery time Shall be directed to the ordering Authorized User's contact person. See also Section 2.12 *Ordering*.

2.21. DEFAULT ON MINI-BID

If during the Contract period an Authorized User has issued a Purchase Order on or before the Final Order Due Date for a Vehicle and that Vehicle becomes unavailable or cannot be supplied for any reason (except as provided for in Appendix B, Section 44 *Savings/Force Majeure*), following the issuance of the Purchase Order, a substitute Vehicle deemed by the Authorized User to be equal to the specifications for the Vehicle specified in the Mini-Bid, Must be supplied by Contractor if requested by the Authorized User. If the Vehicle awarded in the Mini-Bid (i.e., Model Year, Make, Model, Model Code) is not available or not deemed equal to the specifications for the Vehicle specified in the Mini-Bid, then Contractor Must supply a similar Vehicle that meets the specifications for the Vehicle specified in the Mini-Bid. The price for the substitute Vehicles Shall be equal to or less than the price for the Vehicle provided in the Mini-Bid.

Alternatively, the Authorized User May, at their sole discretion, cancel the order and purchase the Vehicle from other sources. In such event the Contractor Shall reimburse the Authorized User for all excess costs over the Contract price for the Vehicle, Chassis or Body that is unavailable or cannot be supplied (except as provided for in Appendix B, Section 44 *Savings/Force Majeure*).

2.22. LIQUIDATED DAMAGES

In the event of a delay that is within control of Contractor that results in a default in the delivery timeframe previously agreed upon by the Contractor and the Authorized User, the Authorized User Shall be entitled to and May assess against the Contractor as liquidated damages and not by way of penalty, a sum calculated as follows:

1. Single OEM Vehicles or Chassis-only orders

Seventy dollars (\$70) per seven (7) calendar day period, per Vehicle, to compensate for delay, and other losses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. The liquidated damages Shall be prorated for a period less than seven (7) days to be an amount equal to ten (\$10) per twenty-four (24) hour period that the delivery is delayed. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery Shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the grace period herein specified, time Shall be of the essence in regard to delivery of the Vehicle.

2. Complete Vehicles that include both a Chassis and Body Upfit, and Body-only orders

One hundred and fifty dollars (\$150) per seven (7) calendar day period, per Complete Vehicle or Body, as applicable, to compensate for delay, and other losses, detriments and inconveniences attendant upon such delay from the end of the grace period commencing from the time delivery was due as specified on the Purchase Order. The liquidated damages Shall be prorated for a period less than seven (7) days to be an amount equal to twenty-two dollars (\$22) per twenty-four (24) hour period that the delivery is delayed. A grace period of seven (7) calendar days commencing on and including the Purchase Order date for delivery Shall be extended to the Contractor prior to the assessment of such liquidated damages. Notice is hereby given to the Contractor that, despite the grace period herein specified, time Shall be of the essence in regard to delivery of the Vehicles

Liquidated damages, if assessed, Shall be deducted from the Purchase Order price for each Vehicle delivered against such Purchase Order.

2.23. CONTRACT ADMINISTRATION

The Contractor Shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor Shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor Shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator Shall be set forth in Attachment 1 – *Contractor Information*. Contractor Must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes Shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

2.24. NYS FINANCIAL SYSTEM (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State May be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place May be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

2.25. DEALER CERTIFICATION

Contractor and third-party businesses used to satisfy Mini-Bid Requests under the Contract Shall be a Dealer for the Vehicle OEM(s) offered under the Mini-Bids. Upon request by OGS or an Authorized User, the Contractor Shall provide proof of that status in a format that is acceptable to the entity that made the request. The Vehicle OEM(s) for which the Contractor is a Dealer Shall be identified in Attachment 1 – *Contractor Information*.

2.26. INSURANCE

The Contractor Shall maintain in force at all times during the term of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 2 – *Insurance Requirements*.

2.27. REPORT OF CONTRACT USAGE

Contractor Shall submit Attachment 3 – *Report of Contract Usage* (including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any) to OGS no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification, or other person identified by OGS for this purpose, and Shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information May be required by OGS and Must be supplied upon request. Failure to submit reports on a timely basis May result in Contract cancellation and designation of Contractor as non-responsible.

2.28. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 Shall be a part of these requirements. These provisions Shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein May result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women Shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors Shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO Shall

apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO- 101- Commodities and Services")

1. The Contractor Shall submit, and Shall require each of its subcontractors to submit, a Form EEO-101- Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services Must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms Shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor May not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor Shall submit the Form EEO-101- Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor Shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor Shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors Shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and Shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.**

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.**

Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846- 8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts Shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs Shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373- 4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

2.29. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation May be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Contractor is encouraged to contact the Division of Service-Disabled Veteran’s Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

2.30. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are

required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products Must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 11 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

2.31. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment May be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, May be found at <https://ogs.ny.gov/greenny/>. The Executive Order No. 4 specification for lubricating oil, high detergent, adopted in February 2009, for example, specifies that where lubricating oil with post-consumer material content is available at a competitive cost and meets the entity's form, function and utility requirements, all affected state entities Shall, to the maximum extent practicable, purchase lubricating oil that meets or exceeds a minimum percentage of post-consumer material content by weight of 55 percent. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

2.32. CONSUMER PRODUCTS CONTAINING MERCURY

Contractor Shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

2.33. DIESEL EMISSION REDUCTION ACT

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law May be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles Must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

2.34. OVERLAPPING CONTRACT PRODUCTS

Products available under this Contract May also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

2.35. NYS VENDOR RESPONSIBILITY

The Contractor Shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given Written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor Must comply with the terms of the suspension order. Contract activity May resume at such time as the Commissioner of OGS issues a Written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner May terminate the Contract.

Upon Written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract May be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS May complete the contractual requirements in any manner he or she May deem advisable and pursue available legal or equitable remedies for breach.

In no case Shall such termination of the Contract by the State be deemed a breach thereof, nor Shall the State be liable for any damages for lost profits or otherwise, which May be sustained by the Contractor as a result of such termination.

2.36. NYS TAX LAW SECTION 5-A

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings May render a Contractor non-responsive and non-responsible. Contractor Shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors May call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

2.37. "OGS OR LESS" GUIDELINES

Purchases of the Products included in the scope of this Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they Must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility Must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

2.38. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law May participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 25 *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that May have delivery locations adjacent to New York State), the terms of the Price clause Shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies Must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's

eligibility to purchase from New York State Contracts May also be directed to NYS Procurement Services Customer Services at 518-474-6717.

2.39. CENTRALIZED CONTRACT MODIFICATIONS

1. OGS, an Authorized User, or the Contractor May suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein May only be made with mutual Written agreement of the parties. Modifications May take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
2. Updates to the Centralized Contract and the Appendices May be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and May require negotiations between Contractor and OGS before execution.
4. All modifications proposed by Contractor Shall be processed in accordance with Appendix C – *Contract Modification Procedure*. The Contractor Shall submit all requests to the OGS Contract Administrator identified on the OGS website for this Contract, in the form and format contained in Appendix C – *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.
5. Modifications proposed by OGS or an Authorized User, including updates and amendments, Shall be processed in accordance with the terms of the Centralized Contract and Appendix B, Section 26 *Modification of Contract Terms*.

2.40. DRUG OR ALCOHOL USE PROHIBITED

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor’s personnel Shall not be permitted in performance of this Contract.

2.41. TRAFFIC INFRACTIONS

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor’s personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of this Contract.

2.42. PROCUREMENT METHOD

The following procurement instructions Shall apply to this Contract. OGS reserves the right to change the processes set forth in this Section, in either non-material or substantive ways without seeking a Contract amendment.

1. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
 - A statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase, if any; and
 - The reason(s) supporting the resulting purchase.

2. An Authorized User Shall review the Contracts and associated NYS Minimum Discounts and available Dealers and OEM Product Lines on the OGS website under Award 23166.
3. NYS Vehicle Marketplace.

Authorized User purchases under this Contract Shall be made through a competitive Mini-Bid conducted via the NYS Vehicle Marketplace eProcurement Platform, as described below. OGS reserves the right to not use an eProcurement Platform, or change the eProcurement Platform's host and/or functionality, throughout the term of the Contract at its discretion, without requiring an amendment of the Contract. The Contractor Shall only provide a Vehicle under this Contract when it has been awarded under the Mini-Bid process. A Mini-Bid awarded by an Authorized User to a Contractor May not be utilized by another Authorized User for procurement of a Vehicle.

 - A. When a need is identified, an Authorized User is required to obtain all internal/control agency approvals necessary prior to initiating a Mini-Bid through the NYS Vehicle Marketplace. Upon internal/control agency approvals, the Authorized User Shall complete the on-line Vehicle request form at the eProcurement Platform. Information to be entered will include the number of Vehicles needed, a description of the Vehicles, Authorized User Specifications, (e.g., required features, deletion of any standard equipment, and addition of Options or Aftermarket components), delivery requirements and locations, and any additional required terms for the Mini-Bid. Authorized User acknowledges that any Vehicle specification information made available through the eProcurement Platform is for the Authorized User's convenience, and that although such information is believed to be accurate, accuracy is not guaranteed.

If the Authorized User is requesting a Chassis or Body for the Contractor to combine with a corresponding Chassis or Body that will be supplied by the Authorized User, then the Authorized User Shall be required to provide specifications for that Chassis or Body supplied by the Authorized User.

A Mini-Bid that does not include a Chassis, Body or Single OEM Vehicle (e.g., a request for a stand-alone Option or Aftermarket Component) is out of the scope of this Contract and Shall not be processed by OGS.
 - B. Each Mini-Bid request Shall be assigned a system-generated Mini-Bid Number. OGS will review the request within three (3) business days and will expedite upon request. The Mini-Bid Shall be publicly posted on the eProcurement Platform, and a system-generated email will be sent to each Contractor. Postings can be viewed by the Contractor on the eProcurement Platform, and May also be publicly viewed via a link on the OGS NYS Vehicle Marketplace website.
 - C. From the date of OGS posting of a Mini-Bid request, Contractors Shall have five (5) business days to submit a response for a Single OEM Vehicles, and fifteen (15) business days to submit a response for a Complete Vehicle that includes both a Chassis and a Body, via the eProcurement Platform. Procurement Services reserves the right to set Mini-Bid response submittal deadlines that are longer or shorter than the standard five (5) or fifteen (15) business days. The Mini-Bid response submittal deadline for each Mini-Bid Shall be posted on the eProcurement Platform.
 - D. Each Mini-Bid posting Shall include contact information for the Authorized User requesting the Vehicle(s). Any questions regarding the Authorized User Specifications and other information posted for a Mini-Bid Must be submitted via the question and answer feature on the eProcurement Platform. The Authorized User Shall be responsible for answering Contractor questions via the eProcurement Platform. Each question and answer submitted via the eProcurement Platform will be publicly posted for all Contractors to view.
 - E. The Contractor Shall be responsible for providing updated email address(es) during the Contract term to the OGS Contract Administrator identified on the Contact Award Notification page posted at the OGS website. The Contractor Must also update its eProcurement Platform profile with updated email addresses(es) during the Contract term.
 - F. A Contractor that offers a Vehicle in response to a posted Mini-Bid Must provide the Mini-Bid response via the eProcurement Platform. The Contractor is responsible to ensure its response is accurate and complete. Contractor Must enter any bid deviations or other additional information applicable to the Mini-

Bid in the designated field on the eProcurement Platform. A Mini-Bid response submitted in a format other than the eProcurement Platform Shall be considered non-responsive and the Mini-Bid response Shall be disqualified.

- G. Timeframe for offers in Mini-Bids. The Vehicle and pricing offered in a Mini-Bid is firm for the timeframes listed below. Once the Contractor has accepted a Purchase Order (see Section 2.12 *Ordering*), the Contractor May not withdraw their offer.
- 1) If providing Vehicle(s) Built to Specifications, the timeframe for offers Shall be as specified in Appendix B, Section 19 *Timeframe for Offers*.
 - 2) If providing Pre-Existing Inventory Vehicle(s), the timeframe during which offers Shall remain firm and cannot be withdrawn Shall be ten (10) calendar days from the first Business Day immediately following the Mini-Bid response submittal deadline, or such other period of time as specified in the Mini-Bid. In order for a Mini-Bid response to be responsive to a Mini-Bid involving Pre-Existing Inventory Vehicle(s), the Contractor is required to retain the Pre-Existing Inventory Vehicle(s) for the ten (10) calendar day period, or such other period of time as set forth in the Mini-Bid. Contractor's failure to retain the Pre-Existing Inventory Vehicle(s) for such period of time Shall render Contractor's Mini-Bid response non-responsive and the Mini-Bid response Shall be disqualified.
- H. The Authorized User Shall be notified via email from the eProcurement Platform when Mini-Bid results are available. The Authorized User Shall be responsible for evaluation and award of the Mini-Bid. Authorized Users are instructed to notify the Contractors by entering each Contractor's award or non-award status via the eProcurement Platform within ten (10) Business Days of receipt of Mini-Bid responses.
- I. The Authorized User Shall evaluate all Mini-Bid responses received in response to the Mini-Bid, and is responsible for verifying that the Vehicle(s) offered meet the Authorized User Specifications. The Contractor Shall, upon request of the Authorized User, submit a Build Sheet, OEM Pricelist and Contractor-Published Pricelist, as applicable, to the Authorized User prior to award of the Mini-Bid. Award Shall be made by the Authorized User to a responsive Contractor based on the requirements specified by the Authorized User in their Mini-Bid.
- J. Upon determination of either award or that an award Shall not be made, the Authorized User Shall issue notification of tentative award, non-award, or that an award Shall not be made, via the eProcurement Platform, to all Contractors that submitted a Mini-Bid response. Notification of tentative award Shall include the final number of Vehicles that the Authorized User intends to issue a Purchase Order for.
- K. A Contractor May submit a Mini-Bid response for a Vehicle OEM that is not set forth in Attachment 1 – *Contractor Information*, provided that the Contractor submits a request to add the OEM to the Contract, in the form and format contained in Appendix C – *Contract Modification Procedure* prior to, or upon, tentative award of the Mini-Bid.

Failure to either submit a request to add the OEM to the Contract, or to provide proof of Dealer status if requested by OGS or the Authorized User, Shall result in the Mini-Bid response being deemed non-responsive and in the rejection of the Mini-Bid response.

- L. After notice of tentative award of the Mini-Bid, the Authorized User Shall issue a Purchase Order to the Contractor following the Authorized User's standard procedures (see Section 2.12 *Ordering*). The Authorized User, at its discretion, May request lower pricing for a Vehicle from the Contractor that is the tentative awardee prior to issuance of a Purchase Order. The contractor May offer lower pricing, but is not obligated to do so (see Appendix B, Section 13 *Pricing*). The Authorized User May request that Additional Options and Aftermarket Components (AOAC) be added or deleted from the awarded Vehicle specifications in accordance with Section 3.9 *Additional Options and Aftermarket Components (AOAC)*. Upon receipt of the Purchase Order for a Vehicle that includes both a Chassis and a Body, at the Authorized User's discretion, the Contractor and Authorized User Shall conduct a pre-production meeting in order to ensure complete and accurate understanding of the Authorized User Specifications and delivery requirements. See Section 3.13 *Pre-Production Meeting*.

M. Upon completion of this Mini-Bid process, the Authorized User Must document the outcome of the Mini-Bid on the eProcurement Platform. This Shall include justification of method of award. If at least three (3) Mini-Bid responses are not submitted, the Authorized User Must justify the reasonableness of award. The Authorized User Must also ensure that copies of the documents are maintained for audit purposes following the Authorized User's standard procedures.

4. Authorized User Procurement Rights.

Authorized Users hereby reserves the right in a Mini-Bid to:

- A. Reject any or all responses received in response to the Mini-Bid;
- B. Withdraw the Mini-Bid at any time, at the Authorized User's sole discretion;
- C. Make an award under the Mini-Bid in whole or in part;
- D. Disqualify any Contractor submitting a response whose conduct and/or proposal fails to conform to the requirements of the Mini-Bid;
- E. Seek clarifications and revisions of Mini-Bid responses;
- F. Prior to the Mini-Bid response submittal deadline, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- G. Prior to the Mini-Bid response submittal deadline, direct Contractors to submit modifications addressing subsequent Mini-Bid amendments;
- H. Change any of the schedule dates with notification through the eProcurement Platform to all Contractors;
- I. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Contractors;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Mini-Bid responses received;
- L. Adopt all or any part of a Contractor's Mini-Bid response in selecting the optimum configuration.
- M. Negotiate with the Contractor responding to the Mini-Bid within the Mini-Bid requirements to serve the best interests of the State. This includes requesting clarifications of any or all Contractor's Mini-Bid responses;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's Mini-Bid response and/or to determine a Contractor's compliance with the requirements of the Mini-Bid;
- O. Select and award the Mini-Bid to other than the selected Contractor in the event of unsuccessful negotiations; and
- P. Use information obtained through site visits, management interviews, and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Contractor in response to the agency's request for clarifying information in the course of evaluation and/or selection under the Mini-Bid.

5. New York State Reserved Rights

The State reserves the right to:

- A. Use an on-line process, such as reverse auction, to make acquisitions under the Contracts. Contractor agrees to participate in an on-line process through the eProcurement Platform established by OGS;
- B. Exclude from the Contract any Vehicles that, at the sole discretion of the State, Shall not be approved for purchase by an Authorized User;
- C. Aggregate the volume of Authorized User requests for Vehicles by combining requests under one Mini-Bid Number; and
- D. Issue a Mini-Bid for Vehicles that May be utilized by all Authorized Users over a period of time.

3. SPECIFICATIONS

3.1. VEHICLE REQUIREMENTS

The terms and conditions in this Section (i.e., 3.1 through 3.19) Shall be considered minimum Vehicle requirements. The Authorized Users Shall include supplemental required specifications in the Mini-Bids. Vehicles delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person May be rejected (see also Appendix B, Section 36 *Rejected Product*). Items which determine this acceptance level Shall include, but not be limited to, the general appearance of the interior and exterior of the Vehicle for completeness and quality of workmanship, lubrication and fluid levels, with any leaks corrected, mechanical operation of the Vehicle and all electrical components operational. Equipment specified to be furnished and installed Shall conform to the best quality standards known to that particular industry, both product and installation.

3.2. STANDARDS, CODES, RULES, AND REGULATIONS

Vehicles Shall be designed and assembled in accordance with all applicable industry standards, including, but not limited to, those listed below. The Vehicles Shall comply with all governmental regulations as they apply to the operation of the Vehicle described in the Authorized User Specifications including, but not limited to, those listed below. If required by law or regulation, the appropriate decals indicating compliance Shall be affixed to the Vehicle.

1. Vehicles Shall conform to any and all applicable New York State laws, regulations and directives, including but not limited to, New York Codes, Rules and Regulations (NYCRR), New York State Vehicle and Traffic Law (NYSVTL), and New York State Dept. of Motor Vehicles (NYSDMV).
2. Vehicles Shall comply with all current applicable Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Administration (FMCSA), National Highway Traffic and Safety (NHTSA), Environmental Protection Agency (EPA), and Occupational Safety & Health Administration (OSHA) requirements.
3. Vehicles Shall comply with the regulations of the Federal Government and New York State (NYCRR) governing the control of air pollution from new motor Vehicles and new motor Vehicle engines in effect on the date of manufacture. Please refer to NYCRR (NY Codes Rules and Regulations), Title 6 (Environmental Conservation) Part 218, *Emissions Standards for Motor Vehicles and Motor Vehicle Engines*.
4. Vehicles Shall be manufactured in accordance with any codes, standards and engineering practices as recommended by the following professional organizations for the specific Vehicle/equipment:

American Institute of Steel Construction (AISC)
American National Standards Institute (ANSI)
American Society of Mechanical Engineers (ASME)
American Society for Testing and Materials (ASTM)
American Trucking Association (ATA)
American Welding Society (AWS)
American Wood-Preservers Association (AWPA)
Battery Council International (BCI)
British Standards Institute (BSI): Limits and Fits
Compressed Air and Gas Institute (CAGI)
Industrial Fastener Institute (IFI)
International Standards Organization (ISO)
Joint Industrial Council (JIC)
National Fire Protection Association (NFPA)
National Truck and Equipment Association (NTEA)
Power Crane and Shovel Association (PCSA)
Society of Automotive Engineers (SAE)
Society of Manufacturing Engineers (SME)
Steel Structure Painting Council (SSPC)

Tire and Rim Association (TRA)

3.3. STANDARD EQUIPMENT

All items of standard equipment which are provided by the OEM Shall be furnished unless such items are expressly deleted by the Authorized User or are specified to be other than standard. When Optional equipment is specified, all components listed in the OEM Pricelist as being included with the Option Shall be furnished.

Example: If the standard Vehicle comes with air conditioning, then air conditioning Must be included with the Vehicle provided to the Authorized User. Air conditioning cannot be deleted because it was not identified as required by the specifications.

3.4. MANUALS

Simultaneous with delivery, all Vehicles Shall be furnished with standard manuals (e.g. maintenance, parts and operational manuals) as would normally accompany such Vehicle(s). Manuals May be provided printed and bound, on CD, or at an online website. If paper manuals are provided, an Authorized User Shall be able to opt not to receive extra copies of documentation when ordering multiple units. This arrangement should be agreed upon between the Contractor and the Authorized User prior to order. An Authorized User May also want to purchase additional sets of documentation, if needed. If the provision of additional sets of documentation is subject to a separate cost, the Contractor Must so advise the Authorized User at the time of order. Contractor Shall also ensure that the part numbers associated with this provision of additional sets of documentation are available to the Authorized User and included on the OEM or Contractor-Published Pricelist.

Further, where documentation is provided either in printed or electronic format, Authorized User Shall be entitled to make copies to the extent necessary to fully enjoy the rights granted under this Contract provided that the Authorized User reproduces the copyright notice and any other legend of ownership on any copies made.

3.5. COMPATIBLE EQUIVALENT

Whenever an item, other than the Vehicle Model, is specified in a Mini-Bid by trade name of an OEM, the term "compatible equivalent," if not inserted therewith, Shall be implied. Any reference to a particular OEM's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Authorized User Shall only consider Mini-Bid responses that include the referenced Product.

At the request of the Authorized User, a Contractor that submits a Mini-Bid response that includes a Compatible Equivalent Shall:

1. Furnish complete identification of the Compatible Equivalent it is offering by trade name, brand and/or Model Code;
2. Furnish descriptive literature and data with respect to the Compatible Equivalent it proposes to furnish; and
3. Indicate any known specification deviations from the referenced Product.

3.6. EQUIPMENT, PARTS AND ACCESSORIES

All equipment, parts and accessories provided under the Contract Shall be in accordance with requirements, recommendations and options of the respective OEMs in addition to conforming to all Federal and State Regulations in effect at the time of delivery. Additionally:

1. All electronic systems Shall be properly insulated so as to not cause any interference with the operation of the Vehicle or the land mobile radio communications system, when properly installed in the Vehicle;
2. Power systems Must be compatible with the engine, transmission, axles, hydraulic system and power steering, etc., in order to meet the requirements specified herein;
3. Complete Vehicles Shall meet the maximum gradeability of the manufacturer when loaded to maximum GVWR without exceeding the engine manufacturer's recommended maximum revolutions per minute ("RPM");

4. The ratio of the rear axle and transmission Shall be geared to maintain a road speed of approximately sixty-five (65) mph on a level road, when operating at maximum GVWR without exceeding the recommended engine RPM figure;
5. Brakes, axles, and suspension components Shall meet or exceed the specified axle rating;
6. All welds to brackets Shall be high quality and show no visible signs of porosity. All OEM and fabricated brackets and braces Shall be finish ground smooth, all sharp corners or edges removed, prepped, primed and painted on all sides to match their surroundings;
7. The Authorized User Shall have its choice of the manufacturer's standard paint colors, and Shall designate the selection on the Purchase Order. All surfaces, including bumpers, wheels and spares which are normally painted Shall be factory painted with the specified color. Aftermarket Components Shall have any rust spots and welding slag removed, be properly sanded, cleaned, prepped and primed per the paint manufacturer's recommendations at no additional cost to the Authorized User. The Vehicle Shall be carefully smoothed, cleaned, primed and finished with top quality transportation enamel. Bodies and auxiliary equipment Shall be primed and finished with not less than two (2) coats of durable enamel in the manufacturer's standard color specified by the Authorized User. All paint, primer, basecoats, clear coats or any other coating within the paint system Shall be lead free;
8. The Vehicle Shall have all required rust proofing applied to the exterior and underside of the Vehicle. No rustproofing compound can be on the personnel compartment's items or the exterior of the Body in unsightly or unintended areas;
9. Tire size and type Shall be original equipment brand or as indicated in the Authorized User Specifications. Tire inflation monitors Shall be supplied as required by Federal Motor Vehicle Safety Standard (FMVSS) 138;
10. All fuel, oil, hydraulic, and air filters Shall be serviceable without interference from other Vehicle components. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Contractor Shall coordinate filter and component placements with the Chassis provider or Body Upfitter to ensure unimpeded servicing is available;
11. Complete Vehicles Shall not exceed the aggregate value of the GAWR (Gross Axle Weight Rating). The GAWR of a front and rear axle assembly Shall meet, or exceed, the lowest component rating thereof;
12. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Contractor Shall ensure installed Body components Shall not interfere with the Chassis configuration and vice versa; and
13. If the Vehicle is a Vehicle that includes both a Chassis and a Body, then the Authorized User Specifications (e.g., Cab to Axle and Wheel Base measurements) Shall be adjusted appropriately for the Complete Vehicle's intended application. See also Section 3.13 *Pre-Production Meeting*.

3.7. OPTIONS

The Contractor Shall provide Options, if specified by an Authorized User in a Mini-Bid, for Vehicles. A Contractor Must provide all Options available from the OEM that are requested by the Authorized User. Options to be offered under the Contract are limited to products that (1) are listed on the OEM or Contractor-Published Pricelist(s), and (2) Shall be installed on the Vehicles awarded in the Mini-Bid.

3.8. AFTERMARKET COMPONENTS

The Contractor Shall provide Aftermarket Components, if specified by an Authorized User in a Mini-Bid, for a Vehicle, A Contractor Must provide all Aftermarket Components available in the Contractor's normal course of business that are requested by the Authorized User. Unless otherwise specified by an Authorized User in a Mini-Bid, Aftermarket Components May be installed by any Aftermarket Component Provider utilized in the Contractor's normal course of business. Aftermarket Components to be offered under the Contract are limited to products that (1) are listed on the Contractor-Published Pricelist(s), and (2) Shall be installed on the Vehicle awarded in the Mini-Bid.

3.9. ADDITIONAL OPTIONS AND AFTERMARKET COMPONENTS (AOAC)

After tentative award of a Mini-Bid, the Authorized User May choose to add or delete Options and Aftermarket Components from the Vehicle awarded in a Mini-Bid from those previously included in the Authorized User Specifications for the Mini-Bid. Any changes to the Authorized User Specifications Shall be by mutual Written agreement between the Authorized User and the Contractor. See Section 2.11 *Additional Options and Aftermarket Components (AOAC) Price*, for terms and conditions applicable to the price of AOAC.

The following AOAC are excluded from the scope of this Contract, and would require that the Authorized User either conduct a new Mini-Bid, or make a non-Contract purchase for the AOAC:

1. AOAC that result in a five (5) percent or greater increase or decrease to the NYS Price For Vehicle, for the Vehicle awarded in the Mini-Bid.
2. AOAC that result in a different Model, Model Code, or Body type than the Vehicle awarded in the Mini-Bid; and
3. AOAC that result in material changes to the Authorized User Specifications included in the Mini-Bid. Material changes include, but are not limited to, the Vehicle feature modifications listed below:
 - A. Engine (e.g., replacing the engine included with the Vehicle offered with another engine available for the same Model);
 - B. Transmission (e.g., replacing the transmission included with the Vehicle offered with another transmission available for the same Model);
 - C. Cab type (e.g., replacing a regular cab with a crew cab);
 - D. Drive/axle type (e.g., replacing a 4x2 with a 4x4);
 - E. Body material (e.g., replacing steel with aluminum); and
 - F. Body length (e.g., increasing length from eight feet to ten feet).

3.10. AVAILABILITY OF SERVICE & PARTS

Service and parts for Product offered under this Contract Must be available to Authorized users within New York State. Parts Must be available on an on-demand basis to Authorized Users for delivery within twenty-four (24) hours, or other timeframe mutually agreed-upon between the Contractor and the Authorized User, unless such part is nationally backordered. Nationally backordered parts Shall be delivered immediately upon availability. Additional payment for expedited orders is at the discretion of the Contractor(s), and Must be mutually agreed upon prior to shipment.

3.11. ADVERTISING

No name, trade mark, decal or other identification, other than that of the OEM, Shall be applied to the Vehicle without prior approval by the Authorized User. Identification of the Contractor Shall not be attached to the Vehicle. Splash guards Shall be plain (without lettering) unless done so in compliance with Authorized User Specifications. In any instance of violation of these restrictions the cost to the Authorized User for removal of such advertising Shall be deducted from Contractor's invoice.

3.12. VEHICLE INSPECTION

Unless otherwise instructed by the Authorized User, all Complete Vehicles Must be delivered with complete NYS Inspections. In the event that a Complete Vehicle is delivered uninspected, \$250 Shall be deducted from the invoice by the Authorized User to cover the cost of the inspection and to compensate for time. The Authorized User reserves the right to cancel a Mini-Bid award and/or take other action if Complete Vehicles are not properly inspected or if the New York State Department of Motor Vehicles inspection sticker is not properly affixed to a Complete Vehicle.

3.13. PRE-PRODUCTION MEETING

If required by the Authorized User, and the Vehicle includes both a Chassis and a Body, then the Contractor Shall coordinate and attend a pre-production meeting at a location convenient to the Authorized User, to provide all necessary information prior to building a Vehicle, or scheduling production. Only after the pre-production meeting, if required by Authorized User, and subsequent Written approval from the Authorized User, Shall the Contractor begin the production.

3.14. PILOT MODEL INSPECTION

Prior to completion of the Vehicles ordered, a complete pilot model inspection of one or more Vehicles Shall be provided by the Contractor if requested by the Authorized User. The terms and conditions of such inspection(s) Shall be provided by the Authorized User, and should be agreed upon by the Contractor and Authorized User prior to scheduling production. This inspection Shall take place inside a building and on a dry Vehicle at the OEM's facility or Contractor's place of business, as agreed to by the Authorized User. The Authorized User Shall be responsible for its own transportation, lodging and meals associated with the initial pilot model inspection. The Authorized User, at its discretion, May require that the Contractor cover the costs of subsequent pilot model inspections should the pilot model not pass the initial inspection.

3.15. GENERAL WARRANTY REQUIREMENTS

In addition to Appendix B, Section 54 *Warranties*, the following general warranty requirements Shall apply to all Vehicles provided under the Contract.

1. The Contractor Shall warrant the Vehicle and related Aftermarket Components against parts failure or malfunction due to design, construction or installation errors, defective workmanship, and missing or incorrect parts. Warranty service Shall be available within New York State, and Shall be honored by all the manufacturer's Dealers in New York State.
2. The Authorized User Shall be responsible for all transportation, pick-up and delivery for any Vehicles procured under the Contract requiring warranty service, unless otherwise agreed upon by the Contractor. Upon Authorized User request, the Contractor May provide delivery and/or pickup service. Any fee for such service is at the discretion of the Contractor, and Must be agreed upon by the Authorized User prior to service.
3. The warranty period for all coverage Shall begin on the date the Vehicle is put in service by the Authorized User. The Authorized User May request a delayed warranty start date when the in-service date is after the delivery date of the Vehicle to the Authorized User. Delayed warranty forms are to be provided with the required motor Vehicle paper work. Where Vehicles develop Chronic Failures during the warranty period, Contractor Shall extend the warranty period following correction of such failures, for a period of time equal to the period of time the Vehicle was out of service.
4. The Contractor Shall be responsible for all warranty claims related to the Vehicle, including Aftermarket Components, as provided by the Contractor at the time of delivery. All components supplied by the Contractor Shall be included and covered by the basic Vehicle or Aftermarket Component warranty. OEM replacement parts are to be new, not remanufactured, unless the OEM has specified that a replacement part be remanufactured, or prior approval has been granted by the Authorized User. All warranties Shall cover all labor and parts replacement during the warranty period. Normal wear and tear items Shall be warranted in accordance with manufacturer's standard warranty. Parts replaced under this warranty Shall be of OEM quality or higher. Service Shall be at a level to maintain or meet the manufacturer's requirements to sustain the warranty. See Appendix B, Section 54 *Warranties*. The Contractor Shall furnish with each repaired Vehicle an information sheet that indicates the type of warranty work performed, parts replaced, and number of labor hours involved.
5. Any warranty requirements included in the Authorized User Specifications are considered minimum. If a minimum warranty requirement is not stated in the Authorized User Specifications, then the contractor Shall guarantee such equipment against defective materials and workmanship for a period of one (1) year from the in-service date, with no mileage limitation. If the manufacturer's standard warranty exceeds the warranty stated in the Authorized User Specifications, or the minimum one (1) year warranty stated herein, then the manufacturer's standard warranty Shall apply.

6. Whenever extended warranty packages are being offered by the OEM or the Contactor at "No Additional Charge," the extended warranty packages Shall be extended to all Contract purchases during the time period that the extended warranty packages are offered.
7. All Vehicle Warranties, including extended warranties, Shall be provided in Written or electronic form to the Authorized User.

3.16. WARRANTY REPAIR BY AUTHORIZED USERS

If certified by the Contractor an Authorized User May perform warranty repairs at Authorized User's facilities. Warranty repairs performed by the Authorized User Shall be reimbursed at the Contractor's standard flat reimbursement rates. Rates Shall be provided at the request of OGS or the Authorized User. Understanding that the State of New York shop Must be "certified" to perform and be reimbursed for warranty repairs, the Contractor Shall provide documentation that details the qualifications required in order for Authorized User maintenance repair facilities to become certified. If not currently available, the Contractor Shall document the potential for this type of infrastructure to develop. The Authorized User Shall be responsible for all costs associated with becoming certified.

3.17. POST-DELIVERY SERVICE

Post-delivery service at locations authorized by the Vehicle OEMs Must be available within NYS for Product provided under the Contract. Post-delivery service Shall be performed in a modern, properly equipped service shop.

An Authorized User Shall have the right to utilize any service location for post-delivery service. If requested by an Authorized User, the Contractor Shall assist the Authorized User in locating a service location authorized by the Vehicle OEM.

3.18. RECALLS

Upon request from the Authorized User, the Contractor Must assist in determining if the Vehicle is subject to any open recalls, and also, if requested by the Authorized User, Must assist in finding an OEM Dealer or other qualified location to perform the recall service.

3.19. TRAINING

If requested by the Authorized User, complete training for each Class 3-8 Vehicle, excluding Single OEM Vehicles, Shall be provided by the Contractor at no additional charge. Training is to include operator training with instruction and demonstration on proper operation of the unit, safety, preventive maintenance and proper usage of parts and service manuals. Training provided Must be sufficient to update technician(s) on all new componentry and diagnostics capabilities. The Contractor Shall provide the training services of qualified factory technician(s) for a minimum period of one (1) full Business Day, at one mutually agreed-upon location (e.g., at the location of delivery or at a field location within the State), at no additional charge. Additional training days and/or locations Shall be provided upon request by the Authorized User. The Contractor May charge a mutually agreed-upon fee for any additional training days and/or locations.

One (1) copy of training programs (DVD or CD format) and/or PowerPoint presentations covering all or any part of the Vehicle, that are normally available from the OEM, Shall be provided to the Authorized User at no additional charge.

4. GENERAL PROVISIONS

4.1. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract Shall be in writing and Shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties May, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days Written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the

designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent Shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to any Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other Shall provide specific facts, circumstances and grounds upon which the breach is being declared.

4.2. CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and Shall in no way be deemed to define or limit any provision thereof.

4.3. SEVERABILITY

If any provision of this Contract is deemed invalid or unenforceable, such determination Shall have no effect on the balance of the Contract, which Shall be enforced and interpreted as if such provision was never included in the Contract.

4.4. COUNTERPARTS

This Contract May be executed in one or more counterparts, each of which Shall be deemed to be an original, but all of which together Shall constitute the same Contract. Any signature page of any such counterpart May be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and Shall bind such party.

4.5. ENTIRE AGREEMENT

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or Written, expressed or implied, which is not contained herein Shall be binding or valid and the Contract Shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users Shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26 *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification Shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms Shall have any force and effect.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B

GENERAL SPECIFICATIONS

For

40440-23166 Vehicles, Class 1-8

TABLE OF CONTENTS

<u>GENERAL</u>	<u>PAGE</u>	<u>TERMS & CONDITIONS (CONT.)</u>	<u>PAGE</u>
1. Ethics Compliance	1	34. Title and Risk of Loss for Products Other than Technology Products	7
2. Definitions	1	35. Product Substitution	7
<u>BID SUBMISSION</u>		36. Rejected Product	7
3. Intentionally Omitted	3	37. Installation	7
4. Intentionally Omitted	3	38. Repaired or Replaced Products, Parts, or Components	7
5. Late Bids	3	39. Employees, Subcontractors and Agents	7
6. Confidential/Trade Secret Materials	3	40. Assignment	7
7. Intentionally Omitted	3	41. Subcontractors and Suppliers	8
8. Taxes	3	42. Suspension of Work	8
9. Expenses Prior to Contract Execution	3	43. Termination	8
10. Product References	3	44. Savings/Force Majeure	8
11. Remanufactured, Recycled, Recyclable, or Recovered Materials	3	45. Contract Invoicing	9
12. Products Manufactured in Public Institutions	4	46. Default - Authorized User	9
13. Pricing	4	47. Prompt Payments	10
14. Intentionally Omitted	4	48. Remedies for Breach	10
15. Purchasing Card	4	49. Assignment of Claim	10
<u>BID EVALUATION</u>		50. Toxic Substances	10
16. Bid Evaluation	4	51. Independent Contractor	10
17. Tie Bids	4	52. Security	11
18. Quantity Changes Prior to Award	4	53. Cooperation with Third Parties	11
19. Timeframe for Offers	5	54. Warranties	11
20. Debriefings	5	55. Legal Compliance	12
21. Contract Publicity	5	56. Indemnification	12
<u>TERMS & CONDITIONS</u>		57. Indemnification Relating to Infringement	12
22. Contract Creation/Execution	5	58. Limitation of Liability	13
23. Contract Term – Extension	5	59. Dispute Resolution Procedures	13
24. Official Use Only/No Personal Use	5	<i>To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.</i>	
25. Participation in Centralized Contracts	5	60. Software License Grant	13
26. Modification of Contract Terms	6	61. Product Acceptance	14
27. Scope Changes	6	62. Audit of Licensed Product Usage	15
28. Estimated/Specific Quantity Contracts	6	63. No Hardstop or Passive License Monitoring	15
29. Emergency Contracts	6	64. Ownership/Title to Project Deliverables	15
30. Purchase Orders	6	65. Proof of License	16
31. Product Delivery	6	66. Changes to Product or Service Offerings	16
32. Weekend and Holiday Deliveries	7		
33. Shipping/Receipt of Product	7		

GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AUTHORIZED USER Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

d. BID SPECIFICATIONS A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

e. COMMISSIONER The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

f. CONTRACT The writings that contain the agreement of the Commissioner and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

- 1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another

jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. Back-Drop Contracts Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. Contract Award Letter A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

g. CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

i. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

j. ENTERPRISE The total business operations in the United States of an Authorized User without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the Authorized User.

k. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

l. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

r. LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. OGS The New York State Office of General Services.

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

w. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to one or more responsive and responsible Bidders.

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

z. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

bb. SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

cc. SITE The location (street address) where Product will be delivered or executed.

dd. SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.

gg. STATE State of New York.

hh. STATE AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ii. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

jj. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

ll. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

BID SUBMISSION**3. INTENTIONALLY OMITTED****4. INTENTIONALLY OMITTED**

5. LATE BIDS Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. CONFIDENTIAL/TRADE SECRET MATERIALS

a. BIDDER/CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner's or Authorized User's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

7. INTENTIONALLY OMITTED**8. TAXES**

a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116(a)(1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

9. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized Users are not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

10. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

11. REMANUFACTURED, RECYCLED, RECYCLABLE, OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable, or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements, or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements, or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

12. PRODUCTS MANUFACTURED IN PUBLIC

INSTITUTIONS Bids offering Products that are manufactured or produced in public institutions will be rejected.

13. PRICING

a. Unit Pricing If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places, for each item unless otherwise specified in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.

c. “No Charge” Bid When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid “no charge” on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. Specific price decreases:

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users:

Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

g. Cost Proposal Revisions A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

14. INTENTIONALLY OMITTED

15. PURCHASING CARD The State’s Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

BID EVALUATION

16. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner’s decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder’s conditional or revocable terms in the Bid.

17. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

18. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

TERMS & CONDITIONS

22. CONTRACT CREATION/EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidders upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

24. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

25. PARTICIPATION IN CENTRALIZED CONTRACTS

a. State Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to hold the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate

any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

26. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer any Authorized User more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against an Authorized User unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

27. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

29. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article

2-B of the Executive Law, or the Commissioner determines pursuant to his or her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

30. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of

the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

32. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

33. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is standard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.

35. PRODUCT SUBSTITUTION In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

36. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

37. INTENTIONALLY OMITTED

38. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS

All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may

waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

41. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

42. SUSPENSION OF WORK The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such

termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

44. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected

party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in

accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

45. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.nv.us, by e-mail at HelpDesk@sfs.nv.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

46. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least 10 business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

47. PROMPT PAYMENTS

a. By State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User, the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may

acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

49. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

50. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by the Authorized User.

51. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

54. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer's Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable, or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User's Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any

services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

g. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

55. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

56. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or

Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

57. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what

extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

58. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

59. DISPUTE RESOLUTION PROCEDURES

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Third Parties Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for

archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. Confidentiality Restrictions If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. Restricted Use by Licensee Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional 30 day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

62. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

(i) For purposes of this clause, "Products" means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

(iii) For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor's standard license

agreement; provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third-Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third-party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third-party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third-party, tax-exempt financing may not

occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products, the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to Third-Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall

be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

INDEX

	<u>Clause</u>		<u>Clause</u>
	<u>No.</u>		<u>No.</u>
<u>A</u>		<u>P</u>	
Audit of Licensed Product Usage	15	Participation in Centralized Contracts	25
Assignment	40	Pricing	13
Assignment of Claim	49	Product Acceptance	14
		Product Delivery	31
<u>B</u>		Product References	10
Bid Evaluation	16	Product Substitution	35
		Products Manufactured in Public Institutions	12
<u>C</u>		Proof of License	16
Changes to Product or Service Offerings	16	Prompt Payments	47
Confidential/Trade Secret Materials	6	Purchase Orders	30
Contract Invoicing	45	Purchasing Card	15
Contract Creation/Execution	22		
Contract Publicity	21	<u>Q</u>	
Contract Term - Extension	23	Quantity Changes Prior to Award	18
Cooperation with Third Parties	53		
		<u>R</u>	
<u>D</u>		Rejected Product	36
Debriefings	20	Remanufactured, Recycled, Recyclable, or Recovered Materials	11
Default - Authorized User	46	Remedies for Breach	48
Definitions	2	Repaired or Replaced Products, Parts, or Components	38
Dispute Resolution Procedures	59		
		<u>S</u>	
<u>E</u>		Savings/Force Majeure	44
Emergency Contracts	29	Scope Changes	27
Employees, Subcontractors and Agents	39	Security	52
Estimated/Specific Quantity Contracts	28	Shipping/Receipt of Product	33
Ethics Compliance	1	Software License Grant	13
Expenses Prior to Contract Execution	9	Subcontractors and Suppliers	41
		Suspension of Work	42
<u>I</u>			
Indemnification	56	<u>T</u>	
Indemnification Relating to Infringement	57	Taxes	8
Independent Contractor	51	Termination	43
Installation	37	Tie Bids	17
		Timeframe for Offers	19
<u>L</u>		Title and Risk of Loss for Products Other than Technology Products	34
Late Bids	5	Toxic Substances	50
Legal Compliance	55		
Limitation of Liability	58	<u>W</u>	
		Warranties	54
<u>M</u>		Weekend and Holiday Deliveries	32
Modification of Contract Terms	26		
<u>N</u>			
No Hardstop or Passive License Monitoring	15		
<u>O</u>			
Official Use Only/No Personal Use	24		
Ownership/Title to Project Deliverables	15		

Appendix C – Contract Modification Procedure

The following guidelines are subject to change at the discretion of OGS. A Contract Amendment requires a formally executed document by mutual agreement of the Parties, to be provided by OGS Contract Administrator, after submission and approval of the Contract Modification Form.

- (1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
 - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
 - b) **AMENDMENTS:** “Amendments” are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- (2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
 - request additional information
 - reject Contract modifications
 - remove Products from Contract modification requests
 - request additional discounts for new or existing Products
- (3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):
 - Price level increases
 - Price level decreases
 - Products being added
- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.



**Office of General Services
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

CONTRACT MODIFICATION FORM	
DATE OF THIS SUBMISSION:	DATE DOCUMENTATION EMAILED:
CONTRACTOR NAME: _____ OGS GROUP #: _____ OGS AWARD #: _____ OGS CONTRACT #: _____	CONTRACTOR CONTACT: Name: _____ Phone #: _____ Email: _____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in either an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.
5. The Contract modification request must be accompanied by the relevant current contract pricing discount information.

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for an: <input type="checkbox"/> Update <input type="checkbox"/> Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: <input type="checkbox"/> Addition of new products or services <input type="checkbox"/> Deletion of products or services <input type="checkbox"/> Change in pricing level <input type="checkbox"/> Other Update <input type="checkbox"/> Other Amendment
3. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* <input type="checkbox"/> Other (provide explanation) _____ _____ _____ *Prices offered are the lowest offered to any similarly situated entity.	4. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current relevant Price List (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List in same format as found in the Pricing Appendix for this Contract <input type="checkbox"/> Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)

Appendix D: Lease Vehicles

SECTION A: LEASE VEHICLE TERMS AND CONDITIONS

This appendix includes the minimum terms and conditions applicable to a vehicle acquisition under the Contract which occurs pursuant to a Lease. The State has not reviewed the additional terms and conditions that a Lease Provider may include in or with a Lease; accordingly, the Authorized User is obligated to review and make an independent determination, with the advice of legal counsel as necessary, before entering into a Lease.

1. DEFINITIONS

Terms used in this Appendix that have a capitalized first letter shall be defined in accordance with Contract Section 1.4 *Definitions and Acronyms*. In addition, the following definitions shall apply:

“**Estimated Annual Mileage**” shall mean the number of miles per year that it is estimated that the Lease Vehicle will be driven, and may be used by the Lease Provider to establish the Residual Value Percentage for a Lease.

“**Excess Mileage Fee**” shall mean the fee, specified by the Lease Provider in a Lease, that must be paid by the Authorized User at the end of the Lease Term for every mile the Lease Vehicle is driven over the Mileage Limit set forth in the Lease.

“**Lease(s)**” shall mean an agreement under the Contract between an Authorized User and a Lease Provider, in which the Lease Provider agrees to provide a Lease Vehicle to the Authorized User in return for a periodic payment.

“**Lease Provider**” shall mean the entity leasing the Lease Vehicle to the Authorized User; A Contractor may be a Lease Provider, provided that the Contractor is the entity providing the Lease.

“**Lease Provider Acquisition Fee**” shall mean the Lease Provider administrative fee that is included in a Lease.

“**Lease Term**” shall mean the stated period of time, from the inception of a Lease to its expiration, during which the terms of the Lease are in force, expressed as a number of months or years from Authorized User acceptance of the Lease Vehicle.

“**Lease Vehicle**” shall mean the Vehicle that is provided under the Lease.

“**Mileage Limit**” shall mean the number of miles that a Lease Vehicle may be driven during the Lease Term without incurring an Excess Mileage Fee; such limit shall be set forth in the Lease.

“**Money Factor**” is the method used by a Lease Provider to indicate the amount of interest charged on a Lease, and is usually equal to the annual percentage rate (APR) divided by 2,400.

“**Monthly Lease Payment**” is the payment made by the Authorized User to the Lease Provider each month during the Lease Term.

“**Normal Wear and Tear**” shall be as defined by the Lease Provider in the Lease.

“**Rental Vehicles**” shall mean a Vehicle owned, maintained, serviced and insured by an individual or entity, that is rented for temporary short-term use (e.g., hourly, daily, or weekly) to other individuals or entities.

“**Residual Value Percentage**” shall mean the percentage used by the Lease Provider to determine the Lease Vehicle Residual Value.

“**Vehicle Capitalized Cost**” shall refer to the dollar amount that is being financed in the Lease.

“**Vehicle Depreciation Amount**” shall mean the amount charged by the Lease Provider for the decline in value of the Lease Vehicle through normal use during the Lease Term.

“**Vehicle Residual Value**” shall mean the value of the Lease Vehicle at the end of the Lease Term; this value may be estimated by the Lease Provider at the beginning of the lease term.

2. LEASE SCOPE AND TERM

The Authorized User shall specify on their Mini-Bid request if the Mini-Bid is for a Lease Vehicle, and shall include any required specifications for the Lease (e.g., Lease Term and type) and the Estimated Annual Mileage, if known. The Contractor may offer the Authorized User any Lease type offered to government entities in its usual course of business. Leases may be provided by a Lease Provider (see Section 3 *Lease Provider*). Rental Vehicles, and extended Vehicle warranties offered at an additional cost, are excluded from the scope of the Contract.

The Authorized User may request any Lease Term that is offered by the Contractor, provided that the initial Lease Term shall be for no less than twelve (12) months, and no longer than thirty-six (36) months. If mutually agreed between the Authorized User and the Lease Provider, the initial Lease Term may be extended for an additional period of up to three (3) months. The Lease Term may also be extended by the Lease Provider to accommodate additional time required by the Authorized User to either return the Lease Vehicle, or to complete a purchase of the Lease Vehicle, at the end of the Lease Term.

The Lease shall begin upon acceptance of the Lease Vehicle by the Authorized User, and shall terminate at the end of the initial Lease Term, unless an extension is requested by the Authorized User in writing at least sixty (60) days prior to the end of the Lease Term.

An Authorized User's Lease Term may continue beyond the end of the Contract term, provided that the Purchase Order for the Lease is issued prior to the expiration of the Contract.

3. LEASE PROVIDER

A Contractor desiring to transfer Lease Vehicles under the Contract shall designate one (1) or more Lease Providers to enter into a Lease with the Authorized User, administer the resulting Lease, and receive the Monthly Lease Payment from the Authorized User.

- A. Conditions of Lease Provider Participation. A Contractor shall only designate Lease Providers that have agreed to the terms and conditions of this Appendix D: *Lease Vehicles*. It shall be the responsibility of the Contractor to obtain agreement from the Lease Provider and to certify such agreement to OGS.
- B. Designation of Lease Providers. When Lease Providers are designated for participation in the Contract, Contractor must provide OGS, in advance, with all necessary billing addresses, Federal Tax Identification Numbers, and NYS Vendor IDs, in the format requested below in Section B *Lease Provider Information*. The Lease Providers designated by the Contractor shall be identified in Attachment 1 – *Contractor Information*, and posted on the Contract Award Notification page for Award 23166 on the OGS website.

The addition and removal of Lease Providers during the Contract term must be requested in accordance with Contract Section 2.39 *Centralized Contract Modifications*. If a proposed Lease Provider does not have a NYS Vendor ID, an OSC Substitute W-9 form (see form AC-3237-S *New York State Substitute Form W-9* at http://osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) shall be completed by each designated Lease Provider and submitted to OGS by the Contractor in advance of submitting the Appendix C – *Contract Modification Procedure*.

- C. Contractor Responsibility for Performance and Reporting. A Contractor that has responded to a Mini-Bid for a Lease Vehicle:
 1. Shall, upon request, assist the Authorized User with obtaining one (1) or more quotes for Lease pricing and proposed Lease agreement(s) from the Lease Provider(s) included on the Contract, and with coordinating and establishing the resultant Lease with the Lease Provider;
 2. Shall be fully liable for the Lease Vehicle prior to delivery and acceptance of the Lease Vehicle by the Authorized User.
 3. Shall not be responsible for the performance of the Lease Provider during the resultant Lease Term, unless the Contractor is the Lease Provider.

4. Shall report all Leases entered into under the Contract on the required quarterly sales reports to the State (see Contract Section 2.27 *Report of Contract Usage*).

D. OGS reserves the right to deny the addition of a Lease Provider or to remove a previously designated Lease Provider from the Contract at any time, at its sole discretion, upon reasonable notice to the Contractor.

4. LEASE PRICING

The following terms and conditions apply to pricing under the Lease. The Authorized User retains the right to negotiate all Lease fees and prices.

- A. Unless otherwise specified by an Authorized User in the Mini-Bid, the Lease price for the Lease Vehicle shall include all customs duties and charges, all Lease Vehicle preparation and clean-up charges, New York State motor vehicle inspection, installation charges and all other incidentals normally included with providing a Lease Vehicle, including the manufacturer's fees (e.g., destination charges), and the Lease Provider Acquisition Fee.
- B. Monthly Lease Payment. The Monthly Lease Payment for a Lease shall be calculated in accordance with the method that the Lease Provider uses in its usual course of business for the Lease type requested by the Authorized User, and shall use the Vehicle prices set forth by the Contractor on their Mini-Bid response as a basis for the calculation. Upon request by the Authorized User, the Lease Provider shall provide the Authorized User with a detailed breakdown of the Monthly Lease Payment calculation. Such detailed breakdown shall include, as applicable, the Lease Provider Acquisition Fee, Vehicle Capitalized Cost, Residual Value Percentage, Vehicle Residual Value, Vehicle Depreciation Amount, and Money Factor.
- C. Excess Mileage Fee. The Excess Mileage Fee for a Lease, if applicable, shall be calculated in accordance with the method that the Lease Provider uses in its usual course of business for the Lease type requested by the Authorized User. The Excess Mileage Fee shall be set forth in the Lease, and shall not be charged if the Authorized User exercises its right to purchase the Lease Vehicle at the end of the Lease Term.
- D. Additional Lease Costs
1. Capitalized Cost Reduction. An Authorized User reserves the right to negotiate a reduction in the Vehicle Capitalized Cost calculated by the Lease Provider. OGS does not recommend that an Authorized User make a down payment on the Lease Vehicle as a means of Capitalized Cost Reduction.
 2. Security Deposit. There shall be no security deposit required for a Lease. In lieu of a security deposit, a Lease Provider may assess a fee at the end of the Lease Term for a Lease Vehicle that exceeds Normal Wear and Tear.
 3. Early Termination Fee. An early termination fee may be charged to the Authorized User, in accordance with the Lease Provider's usual course of business, if a termination of the Lease is requested prior to the end of the Lease Term. This fee shall not be charged if early termination is due to non-appropriation of funds (see Section 8.1 *Nonappropriation / Early Termination of Lease*).
 4. Disposition Fee. A fee may be charged at the end of the Lease Term to cover the Lease Provider expense of cleaning up and selling the Lease Vehicle after it has been returned in accordance with Section 14 *Return of Vehicles*. This fee shall be set forth in the Lease, and shall not be charged if the Authorized User exercises its right to purchase the Lease Vehicle at the end of the Lease Term.
 5. Purchase Option Fee. If an Authorized User exercises its right to purchase the Lease Vehicle at the end of the Lease Term, a purchase option fee may be charged to the Authorized User, in addition to the purchase price of the Lease Vehicle, in accordance with the Lease Provider's usual course of business.

5. AUTHORIZED USER SELECTION OF LEASE PROVIDER

The Authorized User shall award the Lease Vehicle to the Contractor's Lease Provider that offers the lowest Lease pricing among the Lease Providers that meet the Authorized User specifications for the Lease and provides a Lease agreement that the Authorized User agrees to.

The Authorized User may obtain a quote for Lease pricing and proposed Lease agreement(s) from any Contractor, and the applicable Lease Provider(s), that responded to the applicable Mini-Bid for the Lease Vehicle.

6. CONTRACTOR'S ABILITY TO CONDUCT CREDIT EVALUATIONS

A Contractor, or their designated Lease Provider, may conduct credit evaluations prior to entering into a Lease, to the extent set forth below.

- A. State Agencies. The Contractor is precluded from conducting credit evaluations for State Agencies. For the purposes of the coverage provided under this Paragraph, "State Agencies" includes all entities included in the definition of State Agencies provided in Appendix B Section 2 *Definitions*, and also includes the State University of New York.
- B. Other Entities. The Contractor may conduct credit evaluations for Authorized Users that are not State Agencies, and deny a Lease to those that do not meet the Contractor's standard commercial risk qualifications. The Contractor shall notify the Authorized User in writing that its Lease has been denied based on an unsatisfactory credit rating.

7. TITLE, REGISTRATION AND INSURANCE OF VEHICLE

The following terms and conditions shall apply to title, registration and insurance of the Lease Vehicle.

- A. Title. Unless otherwise agreed upon by the Authorized User, Lease Vehicles shall be titled to the Lease Provider throughout the term of the Lease. The Contractor shall bear the costs of the initial titling of the Lease Vehicles.
- B. Registration. Lease Vehicles shall be registered in the name of the Authorized User. Authorized User shall be responsible for costs associated with registering the Lease Vehicle and obtaining Vehicle plates. Authorized Users retain the right to re-register Lease Vehicles, or assign new plates to Lease Vehicles.
- C. Insurance and Insurance Certificate. Insurance that covers the Lease Vehicle, effective for the full Lease Term, shall be provided as set forth below.
 1. State Agencies. The State of New York is self-retained for its motor vehicle liability and Lease Providers must accept such coverage for any Lease with a State Agency. For the purposes of the coverage provided under this Paragraph, "State Agencies" includes all entities included in the definition of State Agencies provided in Appendix B, Section 2 *Definitions*, and also includes the State University of New York. Contractor shall advise Lease Providers to verify coverage with the OGS Fleet Management office at the address below prior to the start of the Lease Term.

The Self Retention program provides statutory liability, no-fault, and Uninsured Motorist coverage subject to the laws of NYS. Suits for bodily injury and property damage in excess of statutory limits, are brought in the NYS Court of Claims, which is supported by a multi-million dollar annual appropriation. Employees as defined in Public Officers Law Section 17 are generally entitled to defense and indemnification in suits arising out of acts or omissions that occur while they are acting within the scope of their employment.

The OGS Fleet Management office administers the program on behalf of the State of New York. Inquiries should be directed to: Office of General Services, Fleet Management, W. Averell Harriman State Office Building Campus, Building 18, Albany, New York 12226, (518) 474-4725.

2. Other Entities. All Authorized Users that are not covered by the NYS self-retention policy shall obtain insurance for any Lease Vehicle in an amount satisfactory to the Lease Provider. A copy of the

insurance certificate, or other satisfactory proof of insurance, shall be provided to the Lease Provider prior to the commencement of the Lease Term.

8. LEASE VEHICLE PURCHASE ORDERS, INVOICING, AND PAYMENTS

The terms and conditions in this Section (i.e., 8 through 8.3) shall apply to Lease Vehicle Purchase Orders, invoicing, and payments. See also Contract Section 2.15 *Invoicing and Payment*.

- A. Authorized User Purchase Orders are to include the following information:
1. Contractor Contract number (e.g., PC12345);
 2. Vehicle Marketplace Mini-Bid Number (e.g. 18010034);
 3. Make, Model and Model Code of the Lease Vehicle(s);
 4. Option code(s) and descriptions, if applicable;
 5. Aftermarket Components part numbers and descriptions, if applicable;
 6. The Lease Term;
 7. The Monthly Lease Payment for each Lease Vehicle;
 8. The Total Lease Price for the Lease Term;
 9. Liquidated damages, if any (see Contract Section 2.22 *Liquidated Damages*).
- B. The Lease Provider shall mail an invoice to the Authorized User indicated on the Purchase Order. Unless otherwise mutually agreed upon by the Lease Provider and the Authorized User, the invoice shall be provided monthly. Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays.
- Invoices shall include, at a minimum, the following information:
1. Contractor Contract number (e.g., PC12345);
 2. Vehicle Marketplace Mini-Bid Number (e.g. 18010034);
 3. Lease Provider NYS Vendor ID (e.g., 1000012345);
 4. Purchase Order number;
 5. Make, Model, Model Code and VIN of the Lease Vehicle;
 6. Lease Term;
 7. The month for which each charge contained on the invoice is applicable;
 8. The Monthly Lease Payment for the applicable month; and
 9. The initial invoice at the start of the Lease Term must contain
 - a. The date of the Lease Vehicle delivery;
 - b. Calculation of the Total Lease Price for the Lease Term; and
 - c. Payment schedule for the Lease.
- C. Upon the submission of an invoice, the Authorized User shall issue payment in accordance with the rates and terms agreed upon in the Lease;
- D. Payment shall be made to the Lease Provider at the address specified on the invoice.
- E. Lease fees shall be invoiced and paid only for the time period from the Lease Vehicle acceptance date to the expiration of the Lease Term;
- F. Once the Lease Vehicle is accepted by the Authorized User, payment will not be withheld during the Lease Term due to performance issues with the Lease Vehicle; and
- G. The Lease Provider may submit invoices in accordance with the billing period utilized in its usual course of business (e.g., on the 15th of each month), or as otherwise mutually agreed upon with the Authorized User. If the Lease Term begins or ends outside the monthly billing period, any charges for the Lease

Term stated in monthly terms shall be prorated on a daily basis based on the actual number of days in the applicable month.

8.1 NONAPPROPRIATION / EARLY TERMINATION OF LEASE

The Authorized User shall not enter into a Lease, unless it reasonably believes that corresponding funds in an amount sufficient to make all payments for the Lease Term will be available to the Authorized User. Nevertheless, the Authorized User may terminate or not renew a Lease at the end of any initial Lease Term or renewal period under this paragraph if adequate funds have not been appropriated to the Authorized User in an amount sufficient to continue to make the Monthly Lease Payments. If this occurs, the Authorized User will promptly notify the Lease Provider and the Lease will be cancelled at the end of the last fiscal year for which funds were appropriated. In the event the Authorized User exercises its rights under this clause, Authorized User shall return the Lease Vehicle per Section 14 *Return of Vehicles*.

8.2 DEFAULT OF AUTHORIZED USER

In the event the Authorized User defaults in the payment of any Lease, and should such default continue for a period of sixty (60) calendar days following receipt by the Authorized User in writing of such default, Lease Provider may repossess the Lease Vehicle of the defaulting Authorized User and thereupon terminate the Lease and any rights, title or interest of Authorized User to such Lease Vehicle. To the extent required by the Lease, the defaulting entity shall be responsible for the payment of all costs and expenses, including reasonable attorney's fees, associated with Lease Provider's repossession of the Lease Vehicle. The notice provided for in this section shall be sent to the same addressee designated by the Authorized User on the Purchase Order.

8.3 OPTION TO PURCHASE VEHICLE

The Authorized User shall have the option to purchase the Lease Vehicle, subject to the following terms and conditions.

- A. If purchase was not mutually agreed upon prior to the start of the Lease, the Authorized User may exercise this option only by providing written notification to the Lease Provider. The effective date of the purchase will be specified in the notification and may be any time during the Lease Term, including any extensions thereto;
- B. Except for final payment and transfer of title to the Authorized User, the Lease Term becomes complete and Lease fees shall be discontinued on the day immediately preceding the effective date of purchase specified in the written notification to the Lease Provider required in Paragraph A of this clause.
- C. The purchase price of the Lease Vehicle shall be as determined per the formula used by the Lease Provider in its usual course of business, and shall be mutually agreed upon prior to invoicing.

9. MARKING OF LEASED VEHICLES

No name other than the OEM shall appear on the Lease Vehicle unless placed by the Authorized User. The Authorized User may place nonpermanent markings or decals as appropriate, identifying the Authorized User and/or NYS, on any Lease Vehicle. The Authorized User shall use markings or decals that are removable without damage to the Lease Vehicle.

10. OPERATION AND MAINTENANCE

The Authorized User shall keep and maintain each Lease Vehicle in proper operating condition in accordance with the OEM specifications. The Authorized User shall be responsible for the performance of all service, maintenance, and repair (except as covered by the basic OEM warranty) required for the continued validation of the Lease Vehicle warranty. Should warranty service be required, the Authorized User shall obtain the service directly through the OEM's Dealers (see also Contract Section 3.15 *General Warranty Requirements*).

If a maintenance program for the Lease Vehicle is provided as a standard feature by the OEM or Contractor, and included in the price of the Vehicle, it shall be provided with the Lease.

11. REASSIGNMENT OF VEHICLES

The Authorized User reserves the right to allow the Lease Vehicle to be used by an entity other than the entity that holds the Lease, without notifying the Lease Provider. A Lease may be assigned to another entity during the Lease Term only with mutual agreement between the Lease Provider and the Authorized User.

12. LOSS DAMAGE / ACCIDENTS / THEFTS / VANDALISM

The Authorized User shall be responsible for loss of or damage to the Lease Vehicle, except for (1) Normal Wear and Tear and (2) loss or damage caused by negligence of the Contractor, its agents, or employees, and (3) product defects.

The Authorized User will notify the Lease Provider within three (3) business days of accident/theft/vandalism and will arrange for repairs of accident/vandalism damage, including damage sustained to a stolen Lease Vehicle during the period prior to recovery. The Lease Provider will not be required to provide a replacement Lease Vehicle during the period the Lease Vehicle is out of service.

If the Lease Vehicle is damaged beyond repair or not recovered within thirty (30) calendar days after the date of theft, the Lease Provider will be paid for the value of the Lease Vehicle in accordance with the terms and conditions set forth in the Lease. This payment shall serve as full satisfaction of any and all Authorized User liabilities under the Contract. Upon payment, unless another method of disposition is mutually agreed upon by the Lease Provider and the Authorized User, the Lease Provider shall provide the Authorized User with the Lease Vehicle title and transfer ownership of said Lease Vehicle to the Authorized User. The Authorized User may then salvage the damaged Lease Vehicle and retains ownership of the stolen Lease Vehicle if it is later recovered.

13. PAYMENT OF TRAFFIC FINES

The Lease Provider shall not be responsible for the payment of fines or charges for traffic violations, or other expenses resulting from Authorized User operation of the Lease Vehicle. In the event that the Lease Provider receives notice of an expense resulting from Authorized User operation of the Lease Vehicle, such fee shall be paid by the Lease Provider and reimbursed by the Authorized User. Payment by the Lease Provider of such fees is to be made in a timely manner to avoid surcharges. If additional surcharges are accrued due to late payment, the Lease Provider will be responsible for the surcharge amount. The Lease Provider will be required to list any payment resulting from Authorized User operation of the Lease Vehicle on monthly invoices, for reimbursement.

14. RETURN OF VEHICLES

If the Authorized User does not exercise its option to purchase the Lease Vehicle at the end of the Lease Term, the Authorized User shall return the Lease Vehicle in accordance with the terms and conditions set forth in the Lease.

SECTION B: LEASE PROVIDER INFORMATION

A Contractor desiring to transfer Lease Vehicles under the Contract, who will not be acting as sole Lease Provider, shall designate Lease Provider(s) to be utilized under the Contract by completing and submitting this form, along with the "Contract Modification Form" set forth in Appendix C: *Contract Modification Procedure* (Check "Other Update" on the form), to the Procurement Services Contract Administrator for Award 23166.

Lease Provider Information	
Legal Business Name, including DBA	
Business Address	
City, State, Zip Code	
Federal Tax ID #	
NYS Vendor ID	
Contact Name	
Contact Title	
Contact Email	
Contact Phone Number	
Remittance Address (if different from above)	
Remittance City, State, Zip Code	
MWBE and/or SDVOB Certification:	<input type="checkbox"/> NYS Certified Women Owned <input type="checkbox"/> NYS Certified Minority Owned <input type="checkbox"/> SDVOB
SBE	<input type="checkbox"/> NYS Small Business Enterprise (self-identified)

By signing below, the Contractor certifies that the Lease Provider listed above has agreed to the terms and conditions set forth in Appendix D: *Lease Vehicles*, Section A: *Lease Vehicle Terms and Conditions*, and the Lease Provider has agreed that all Leases will be in compliance therewith.

Legal Business Name of Contractor	
D/B/A - Doing Business As (if applicable):	
Contractor's Signature:	Printed or Typed Name:
Title:	Date:

ATTACHMENT 1: CONTRACTOR INFORMATION

CONTRACTOR/COMPANY INFORMATION	
Company Name:	Click or tap here to enter text.
Address:	Click or tap here to enter text.
Company Website:	Click or tap here to enter text.
Federal ID #:	Click or tap here to enter text.
NYS Vendor ID #:	Click or tap here to enter text.
Contract Administrator Name:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Email:	Click or tap here to enter text.
Phone:	Click or tap here to enter text.
Toll Free Phone:	Click or tap here to enter text.

SALES/BILLING (if different from above)	
Contact Name:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Address (if different from above):	Click or tap here to enter text.
Email:	Click or tap here to enter text.
Phone:	Click or tap here to enter text.
Toll Free Phone:	Click or tap here to enter text.
Normal Business Days/Hours	Click or tap here to enter text.

EMERGENCIES	
Contact Name:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Address (if different from above):	Click or tap here to enter text.
Email:	Click or tap here to enter text.
Phone:	Click or tap here to enter text.
Cell Phone:	Click or tap here to enter text.

PAYMENT/ORDERING INFORMATION

Does Contractor offer a prompt payment discount for payments made in less than 30 days after receipt of a proper invoice? If yes, please detail the additional discounts by providing the percentage of discounts and the specific number of days within which payment must be made for the discounts to apply (for example: 2% / 15 days; 1% / 20 days).	Click or tap here to enter text.
Does Contractor accept the NYS Purchasing Card (see Appendix B, Purchasing Card) at no additional charge, for orders up to and including \$50,000?	Click or tap here to enter text.
If Contractor requires a minimum and/or maximum purchase amount for orders placed using the NYS Purchasing Card, please indicate those minimum and maximum amounts. If there is no minimum or maximum, enter "N/A".	Click or tap here to enter text.
If Contractor offers an additional discount for purchases made with the NYS Purchasing Card, enter here (%).	Click or tap here to enter text.

NYS MINIMUM DISCOUNTS

The Contractor is an authorized Dealer of the following Single OEM Vehicle(s) and/or Chassis Make(s)/Model(s) and shall offer them at the NYS Minimum Discount(s) listed below, or a greater discount, for purchases under the Contract.

Make (e.g., Ford, International, Freightliner)	Model (e.g. All Models, F-150, Bolt EV, M2-106)	NYS Minimum Discount (Minimum of 1%)
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Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
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Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
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BODIES OFFERED

The Contractor is an authorized Dealer of the Body OEM Product Line(s) and Body Types listed below and May offer them for purchases under the Contract.

Body OEM Product Line(s) Offered (e.g., Viking, Galion, Reading)	Body Types Offered (e.g., aerial lift, ambulance, beverage, box/van, bus, concrete mixer, dump, flat bed, log, pickup, recyclable/refuse, refrigerator, service/utility, stake, sweeper, tank, tow truck, trailer),
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Click or tap here to enter text.	Click or tap here to enter text.
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Attachment 2: Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

[Upon tentative award] The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance shall be provided at the time of Bid submission;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this Solicitation.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in any Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.
- 3. Certificates of Insurance/Notices.** Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates should reference the Solicitation or award number and shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and

GROUP 40440-23166 Vehicles, Class 1-8 (Statewide)

- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

- 4. Primary Coverage.** All liability and excess insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.
- 5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.
- 6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
- 7. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
- 8. Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. A Waiver of Subrogation

GROUP 40440-23166 Vehicles, Class 1-8 (Statewide)

Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

- 9. *Additional Insured.*** The Contractor shall cause to be included in each of the liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.
- 10. *Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
- 11. *Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.
- 12. *Policy Renewal/Expiration*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
- 13. *Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

 - For certificates of insurance: 5 business days
 - For information on self-insurance or self-retention programs: 15 calendar days
 - For other requested documentation evidencing coverage: 15 calendar days
 - For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

GROUP 40440-23166 Vehicles, Class 1-8 (Statewide)

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type OPTION 1 (Commercial Liability Insurance)		Proof of Coverage is Due
Commercial General Liability	Not less than \$2,000,000 each occurrence	At time of Bid submission and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Business Automobile Liability Insurance	Not less than \$2,000,000 each occurrence	
Garage Liability Insurance Garagekeepers Liability *	\$100,000 per vehicle \$500,000 aggregate	
Workers' Compensation		
Disability Benefits		

Insurance Type – OPTION 2 (Garage Liability Insurance)		Proof of Coverage is Due
Business Automobile Liability	Not less than \$2,000,000 each occurrence	At time of Bid submission and updated in accordance with Contract
Garage Liability Insurance for garage operations	Not less than \$2,000,000 each occurrence	
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Garagekeepers Liability*	\$100,000 per vehicle \$500,000 aggregate	
Workers' Compensation		
Disability Benefits		

- 1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- Cross liability for additional insureds; and

GROUP 40440-23166 Vehicles, Class 1-8 (Statewide)

- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

2. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile used in connection with performance under any Contract resulting from this Solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under any Contract resulting from this Solicitation, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, on a form provided by OGS. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires or leases any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. Garage Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CA 00 05, or a substitute form providing equivalent coverage, including coverage for all garage operations of the Contractor, including premises and operations; products and completed operations, and garagekeepers liability coverage with minimum limits of:

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligation assumed under the Contract;
- Cross liability for additional insureds; and
- Product/completed operation for a term of no less than one year (1) (may be renewed with policy annually for 1 year) commencing upon acceptance of the work, as required by the Contract.

***Garagekeepers Liability** – If Authorized Users require the Contractor to maintain, service and repair vehicles, shall provide evidence of coverage on a “**direct primary**” basis.

4. Workers’ Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals.

Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OGS. Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of Bid submission, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

GROUP 40440-23166 Vehicles, Class 1-8 (Statewide)

The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Group 40440-23166, VEHICLES, Class 1-8 (Statewide)**Attachment 3: *Report of Contract Usage***

DO NOT ADD, REMOVE OR REARRANGE ANY COLUMNS OR ROWS.

Enter Contractor information below.

Contract Group & Award Number:	Group 40440, Award 23166
Contract Number:	
Contract Sales Period:	
Contractor Company Name:	
Contact Name:	
Contact E-Mail:	
Contact Phone Number:	

Chassis or Single OEM Vehicle Data									
Equipment Type	Equipment Description	Model Year (if applicable)	OEM/Make (if applicable)	Model/Model Code (if applicable)	VIN (if known at time of completing report)	NYS Base MSRP (including Options + all OEM fees)	NYS Discount (%)	NYS Base Price	NYS Aftermarket Components Price
Single OEM Vehicle	Sedan	2020	Dodge	Charger	12223444557889876	\$31,000.00	17.00%	\$27,900.00	
Chassis	20k Chassis Cab	2019	Navistar International	7300 SFA 4X4	11223344556677800	\$60,000.00	25.50%	\$59,847.00	\$1,000.00
Body	Tandem Axle Dump Body	2019	N/A	N/A				\$0.00	
Complete Vehicle	Tandem Axle Dump Truck	2019	Navistar International	7300 SFA 4X4	11223344556677899	\$60,000.00	28.30%	\$59,830.20	\$1,000.00
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Body Data						
NYS Price for Vehicle	OEM/Make (if applicable)	Model/Model Code (if applicable)	NYS Base Price	NYS Aftermarket Components Price	NYS Price for Vehicle	Total NYS Contract Price for Complete Vehicle
\$27,900.00					\$0.00	\$27,900.00
\$60,847.00	N/A	N/A			\$0.00	\$60,847.00
\$0.00	Viking	Proline 1415LW	\$45,000.00	\$1,000.00	\$46,000.00	\$46,000.00
\$60,830.20	Viking	Proline 1415LW	\$45,000.00	\$1,000.00	\$46,000.00	\$106,830.20
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